



2024:DHC:6191



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 12th August, 2024+ W.P.(CRL) 454/2023, CRL.M.A. 32698/2023 (directions)

VIPIN KUMAR SALUJA

.....Petitioner

Through: Counsel for petitioner (appearance
not given).

versus

STATE (NCT OF DELHI) & ORS.

.....Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC for
the State.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Writ Petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C. for quashing of the *Punishment Ticket* dated 13.09.2022 and for directing the respondent No. 3 to release the petitioner on Furlough in compliance of the Order dated 16.09.2022.
2. The petitioner was convicted by the learned ASJ for the offences under Section 302/364/392 and 201 IPC vide Judgement dated 16.11.2015 to Life Imprisonment in addition to other sentences under other sections.
3. The Criminal Appeal No. 362/2016 got dismissed by the Division Bench of this Court on 05.01.2018. The SLP (Crl) No. 1746/2019 was also



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met with the same fate and was dismissed by the Apex Court vide Judgement dated 11.02.2019.

4. On 13.09.2022 at around 7:00 PM, it was reported that the petitioner had hurled abusive words and had attacked the Warder with threat of getting him thrashed outside the Jail. The *Punishment Ticket* was issued and *Major Punishment* was imposed on the petitioner by *stopping his canteen and phone call facility for two weeks subject to judicial appraisal*. The aforesaid punishment was approved vide Order dated 17.10.2022 by the Inspecting Judge, which was communicated to respondent No. 2 vide letter dated 28.10.2022.

5. The petitioner had been granted a furlough for three weeks by the respondent No. 3 vide earlier Order dated 16.09.2022. However, on account of the imposition of *Major punishment* which got confirmed by the Inspecting Judge, he was not released on furlough.

6. The punishment imposed upon the petitioner had been *challenged on the ground* that the procedure as provided in Rule 1272 of Delhi Prison Rules, 2018 has not been followed. According to this Rule, the petitioner was required to be served with a Show Cause Notice and was entitled to a mini trial by way of recording of the witnesses and full opportunity had to be given to the petitioner for producing his defence. The complete enquiry, findings and the punishment awarded, was then required to be forwarded to the learned Sessions Judge for approval.

7. In the present case, neither any Show Cause Notice has been served on the petitioner nor any opportunity has been given to lead his defence. Even his statement had not been recorded in the presence of two witnesses. It is therefore, submitted that the Major punishment inflicted on the



petitioner, is liable to be set aside.

8. It is further contended that as a consequence of the punishment, the Furlough which had been granted earlier, was also denied to him. It is a case where he has been punished twice for the same offences, which is against the principles of natural justice.

9. The petitioner has placed reliance on Praveen Rana vs. State (Govt. of NCT of Delhi) ; Vipin Sharma vs. State (W.P. CrI. No. 44/2021 decided on 18.08.2022); Vivek Kumar Sharma vs. State (W.P. CrI. No. 92/2021 decided on 18.08.2022); Kundan Singh vs. State (Govt. of NCT of Delhi) (W.P. CrI. No. 1849/2021); Vishnu vs. State (Govt. of NCT of Delhi) (W.P. CrI. No. 47/2019) to assert that the impugned punishment is liable to be quashed and he is entitled to be released on Furlough.

10. The respondents had filed **a Status Report** wherein it is submitted that the conduct of the Petitioner has not been satisfactory. Different punishments have been imposed, on 15.09.2015 for being late on Court date; on 15.10.2017 for damage to the property by removing the glass covering of the fire hydrant; for large quantity of psychiatry medicine found in his bag on 06.12.2017 and for misbehaving and causing self injury on 12.03.2019.

11. It is further stated that the convict was heard in person before the punishment was inflicted, after which the *Mushakkat*/Labour in the factory was stopped immediately in addition to the stoppage of two weeks phone call and canteen facility; the three week Furlough which had been granted earlier, had also been stopped.

12. Submissions heard.

13. The Rule 1273 of the Delhi Prison Rules, 2018 reads as under:

“The Superintendent shall hold an inquiry touching every



prison offence committed or alleged to have been committed by a prisoner in the prison in a quasi-judicial manner recording the statements of all concerned witnesses, giving full opportunity to the offender for his defense. Confessional statements of the offender should also be recorded in the presence of two witnesses. Findings and punishment in the manner provided in law should be recorded after applying judicious mind by the Superintendent in his own hand in the prisoner's history ticket. The complete enquiry file, findings and the punishment awarded shall be immediately forwarded to the District and Sessions Judge for obtaining judicial appraisal in all cases except in cases of formal warning. Where such information, on account of exigency is difficult to be forwarded immediately, be given within 2 days of finding. The Superintendent shall satisfy himself that every punishment so ordered, is duly carried into effect in accordance with law: Provided that the Superintendent, at any time, if physically incapacitated from making such record, cause the same to be made in his presence and under his directions."

14. This Rule enshrines the principles of Natural Justice of being given an opportunity of being heard before being condemned.

15. In the present case, the copy of the *Punishment Ticket* and the punishment imposed on 13.09.2022 has been annexed along with the Status Report. It is quite evident from the perusal of the said *Punishment Ticket* and the Order that the Petitioner had been heard and the CCTV Camera footage of the incident showing him getting physical with the staff on duty after



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verbal altercation between them, had also been perused. Consequently, the *Major Punishment* had been imposed. The question is whether the procedure as detailed in the Rule 1273 of the Delhi Prison Rules, 2018 had been followed while imposing the *Major Punishment*.

16. In so far as the requirement of *Show Cause Notice* is concerned, it is quite apparent that the petitioner was called and heard which implies that he was explained the allegations and was given an opportunity to put forth his defences. Not only this, there is also an independent evidence by way of the CCTV Camera footage which had been viewed and same has not been denied or controverted by the petitioner. The counsel for the respondents had also submitted that the petitioner had even given a Reply in which he had tendered his apology, though the same has not been placed on record.

17. The Show Cause Notice has no prescribed proforma and the objective of making a provision of giving a Show Cause Notice is only to give an opportunity to the petitioner/ the accused to explain the allegations against him. In the present case, the petitioner had been heard and was also given an opportunity to tender his explanation. There is in fact an admission of his fight with the Warder, which is corroborated by the independent evidence by way of the CCTV Camera.

18. While the procedure which has adopted, may not be in strictest of conformity with Rule 1273 of the Delhi Prison Rules, it is quite evident that a summary procedure had been followed, in which the petitioner had duly participated. Now on the grounds of technicalities, he cannot assail that the punishment so imposed, which in the circumstances, stand duly justified.

19. The petitioner has taken a plea of being punished twice; once when the major punishment has been imposed pursuant to Punishment Ticket and



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second time when his already sanctioned Furlough was denied on this ground. The condition precedent for grant of Furlough is the Good conduct of the Convict. Once there is breach or non - satisfaction of the prior condition, the petitioner is not entitled to the Furlough. It is not a case of punishment twice for the same dereliction, but both work in their independent sphere and denial of furlough for not observing good conduct, cannot be termed as Double Jeopardy. This contention of the Petitioner holds no merit.

20. It is not an appropriate case where the intervention of the Court is warranted and the punishment imposed on the *punishment ticket* issued to the petitioner, does not merit any interference. However, it is hereby directed that the Application for Furlough of the petitioner in future may be considered *de-hors* the present punishment.

21. The petitioner has also sought that the Furlough which had been allowed vide Order dated 16.09.2022 may be implemented. However, in the present circumstances no such directions are warranted. However, the petitioner is at liberty to move a fresh Application for Furlough, which be considered by the Jail Superintendent, on its own merits.

22. The Petition is accordingly, disposed of along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 12, 2024/PT