



2024:DHC:6466



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 22nd August, 2024

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W.P.(CRL) 1757/2023**NEERAJ KUMAR NAGAR @ NAGAR**

.....Petitioner

Through: Mr. Sarthak Maggaon, Advocate
through VC.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC, Crl. with
Ms. Charu Sharma, Mr. Arjit Sharma,
Mr. Vaibhav Vats & Mr. Nikunj
Bindal, Advocates for State.
Insp. Pawan & S.I. Rohitash, PS Neb
Sarai, Delhi.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking to set aside the Punishment Ticket No. 520 dated 22.08.2022.
2. It is submitted in the petition that the petitioner, who was arrested in FIR No. 250/2012 registered under Sections 302/307/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) Police Station Neb Sarai, Delhi, has been convicted *vide* Judgment dated 26.05.2018 under Sections 326/34 of IPC, 1860 and sentenced to under rigorous imprisonment for a period of eight years with a fine of Rs. 5,000/-, in default to undergo

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SHARMASigning Date: 25.08.2024
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simple imprisonment for three months *vide* Order on Sentence dated 07.06.2018.

3. Thereafter, the petitioner filed the Criminal Appeal Nos. 88/2019, 700/2019 before this Court challenging his conviction. However, the same had been disposed of *vide* Order and Judgment dated 14.11.2019, whereby his conviction had been converted into Section 304/34 of IPC, 1860 and his punishment enhanced to rigorous imprisonment for a period of ten years and a fine of Rs. 5,000/-.

4. This Court *vide* Order dated 28.07.2020 passed in W.P.(CRL.) 620/2020 titled *Neeraj Alias Nagar vs. State (Govt. of NCT of Delhi)* granted *parole* to the petitioner for a period of four weeks and the same was extended from time to time on account of COVID-19 Pandemic.

5. It is claimed that as the date of surrender had not been communicated to the petitioner, he was under the *bona fide* belief that his emergency parole has been extended. Thereafter, on intimation being received by the Jail Authority, the petitioner voluntarily surrendered himself on 22.08.2022, though his surrender has been shown as his re-arrest. The petitioner has already undergone ten years of his sentence in September, 2022. It is submitted that the entire period of emergency parole is liable to be excluded from the period of sentence. Therefore, petitioner has sought that the Punishment Ticket No. 520 dated 22.08.2022 be quashed.

6. **The Jail Superintendent in his Affidavit/Status Report** has stated that multiple punishments have been recorded against the petitioner during his incarceration in jail due to acts committed by him in the jail like recovery of mobile on four occasions, misbehaviour with DJ & TSP staff, recovery of handmade heater and knife and he also jumped the Parole.



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7. It is submitted that the petitioner was released on parole for a period of one month on 31.07.2020 which was extended from time to time due to COVID-19 Pandemic and his surrender was fixed for 15.03.2021, but he jumped the parole, for which a telephonic call was made by the Office on his mobile number, but the same was out of reach. This Court was informed about the non-surrender of the petitioner *vide* Letter No. 1335 dated 05.04.2021 and the learned Additional Sessions Judge was also informed about the same *vide* Letter No. 1635 dated 04.05.2021.

8. Consequently, this Court directed on 26.04.2021 that the non-surrender of the petitioner be intimated to the Trial Court for initiating appropriate proceedings against him.

9. The wireless messages were sent to the concerned Authority for re-arrest of the petitioner in order to serve his remaining sentence *vide* Letter Nos. 1309 dated 05.04.2021, 1634 dated 04.05.2021, 2002 dated 02.07.2021, 4075 dated 06.11.2021 and 1748 dated 07.04.2022.

10. Further, a Notice was served to his *surety* *Shri Anil*, son of *Shri Hari Prasad* through SHO, Police Station Tigri, South Delhi, asking him to explain as to why the surety amount not to be forfeited and deposited in Government Fund.

11. Thereafter, the petitioner was re-arrested by the Crime Branch, SR, Delhi Police *vide* DD No. 07 dated 22.08.2022. The Punishment Ticket has accordingly been recorded and the same has been approved by the learned Additional Sessions Judge *vide* Order No. 26855(i)/Genl.II/2022 dated 28.10.2022.

12. It is submitted that *vide* Notification No. 64335 dated 29.10.2021, the Circular has been issued by the Director General Prisons, Prison



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Headquarters, Tihar, New Delhi that those prisoners who did not surrender on time after being released due to COVID-19 Pandemic, if *wilful or without any reasonable explanation*, the convicts have to be treated as *Emergency Parole jumpers*. Some of them have been re-arrested by the Delhi Police in the same case or the other. Such prisoners would not be entitled to the benefit of exclusion of such Emergency Parole period from their sentence, in case it is established that non-surrender was intentional and *mala fide*.

13. As on 06.09.2023, the petitioner has undergone eight years eleven months and three days of actual sentence and accordingly his unexpired portion of the sentence is eight months and ten days. He was released from the jail on 06.09.2023 on Bail granted *vide* Order dated 04.09.2023 passed in CRL.M.A. 16414/2023, filed in the present petition.

14. Submissions heard.

15. The Punishment Ticket No.520 dated 22.08.2022 was served upon the petitioner for failing to surrender on the due date i.e. 15.03.2021 and had been re-arrested and brought to jail on 22.08.2022 i.e. after about an year and a half.

16. The petitioner has taken a defence that he himself has voluntarily surrendered on 22.08.2022 and was not re-arrested as is claimed by the respondent. However, the respondents have explained that when he failed to surrender, various letters dated 05.04.2021, 04.05.2021, 02.07.2021, 06.11.2021 and 07.04.2022 were sent to the concerned Authority for re-arrest of the petitioner. Furthermore, Notice was duly served upon Sh. Anil, his surety.

17. The petitioner has claimed that he was not aware of the date of



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surrender. If so was the case, there is no explanation forthcoming as to why he himself surrendered on 22.08.2022. Rather, the contentions of the respondent that he had been duly intimated is acceptable because there was no other way the petitioner could have known about the surrender.

18. It is pertinent to observe that the learned Counsel on behalf of the petitioner has argued that even otherwise the petitioner was not in a position to surrender because of the pregnancy of his wife who was in her third trimester of pregnancy. It is all reflective of the fact that the petitioner intentionally did not surrender on the scheduled date . He wilfully and intentionally did not surrender which compelled the respondent to seek his arrest by the Competent Authority through various letters and even NBW got issued, with the Notice of the Surety. The explanation tendered by the petitioner for delayed surrender is, therefore, neither tenable nor established from his own submissions.

19. The *second aspect* on which the Punishment Ticket has been challenged is that the procedure as prescribed in Rule 1273 for imposing a Major penalty has not been followed.

20. The aforesaid Punishment Ticket imposed the penalty in the following terms:

*“..., undersigned awarded him punishment for **one month Mulakat stoppage & One Month Telephone calling system stoppage and one month canteen facilities stoppage and 28 days 14 Remission forfeited subject to appraisal by the Ld. Dist. and Sessions Judge**”*

Pertinently, this falls in the category of *Major Punishment under Rule 1271 of the Delhi Prison Rules, 2018.*

21. The **procedure for awarding the punishment** has been laid down in



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Rule 1272 of the Delhi Prison Rules, 2018 which provides that *For award of major punishment the prisoner should be given notice in writing, calling him to show cause with reference to the alleged violation of the Jail Rules.*”

22. Thus, there must be a *Show-cause Notice* given to the convict with an opportunity to explain the Charge levelled against him and only after considering his response, should the punishment be inflicted.

23. As is reflected from the record of the respondent, it had merely put the allegation and had awarded the sentence. There is no Show Cause Notice served to the convict-petitioner before awarding the Major punishment. The procedure as mandated under Rule 1272 of the Delhi Prison Rules, 2018 has, therefore, been totally ignored by the Jail Authority.

24. The respondent could not have imposed the Major punishment without following due procedure in accordance with the Jail prison Rules.

25. The present Petition is hereby allowed and the Punishment Ticket is hereby quashed.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2024
S.Sharma/va