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

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***Reserved on: 09.01.2024
Pronounced on: 19.03.2024***+ **W.P.(CRL) 1912/2023**

MUKESH (IN JC)

..... Petitioner

Through: Mr. Akshay Bhandari and Ms.
Megha Saroha, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC
(Crl.) for the State with Mr.
Alok Sharma, Mr. Vasu
Agarwal, Advocates and
Inspector Manoj Kumar, P.S.
Anand Vihar.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of punishment ticket dated 26.05.2023 awarded to the petitioner by the respondent.



2. The petitioner is presently confined in Central Jail No. 14, Mandoli, New Delhi. He was convicted under Sections 302/325/323/34 of Indian Penal Code, 1860 ('IPC') in case arising out of FIR bearing no. 433/2009, registered at Police Station, Anand Vihar, Delhi and by virtue of order on sentence dated 29.04.2014, he was sentenced to undergo imprisonment for life by the learned Additional Sessions Judge, Karkardooma Courts, Delhi. His appeal against conviction i.e., CRL.A. 562/2014 was dismissed by this Court *vide* judgment dated 15.05.2019.

3. Learned counsel for the petitioner submits that the petitioner was released on 15.05.2021 on emergency parole for a period of 90 days due to COVID-19 pandemic, and as per the order dated 24.03.2023 of the Hon'ble Supreme Court in Suo Moto Writ Petition bearing No. 01/2020, the petitioner had to surrender before the competent authority within the next 15 days and in accordance with the said order, the petitioner had surrendered on 29.04.2023 i.e., late by 21 days. Therefore, on account of late surrender, the impugned punishment ticket has been awarded to the petitioner. It is argued that punishment ticket dated 29.04.2023 and the appraisal of the punishment by Principle and Sessions Judge *vide* order dated 26.05.2023 is arbitrary, unfair, unjust and contrary to the fundamental principles of law. It is further argued that the said orders violate the very basic principles of natural justice of being heard before punished, and the same fails to comply with Rule 1272 and 1273 of Delhi Prison Rules, 2018. It is further argued by learned counsel for



the petitioner that no show cause notice was given to the petitioner and neither any opportunity of being heard was given to him, nor was any reply in writing called from the petitioner. Therefore, it is prayed that the impugned punishment ticket be quashed.

4. *Per contra*, learned counsel appearing on behalf of the respondent draws this Court's attention to the fact that the petitioner, while on emergency parole for a period of 90 days due to pandemic COVID-19, had not surrendered on time before the jail authorities as per the order dated 24.03.2023 passed by the Hon'ble Apex Court in *Suo Moto Writ Petition* bearing No. 01/2020. It is further stated that the petitioner had thereafter, surrendered himself on 29.04.2023 i.e., late by 21 days for which he was issued the punishment ticket. Moreover, as per the judicial appraisal order dated 26.05.2023, the petitioner has been awarded an opportunity to be heard in presence of two witnesses. Therefore, it is prayed that the present petition be dismissed as the punishment ticket dated 29.04.2023 and the appraisal of the punishment by learned Principle and Sessions Judge *vide* order dated 26.05.2023 are in accordance with law.

5. This Court has heard arguments addressed by both the parties, and has gone through the case file, as well as the impugned order.

6. The punishment ticket issued by the respondent/competent authority *vide* order dated 29.04.2023, is reproduced as under:

“Convict: Mukesh S/o Moti Lal
On 29.04.2023, it has been reported that convict Mukesh S/o Moti Lal was released on 15.05.2021 on emergency Parole for a period of 90 days due to pandemic of covid -



19 which was extended time to time and as per the order dated 24.03.2023 of Hon'ble Supreme Court in Suo Moto Writ Petition 01/2020, all the convicts released on emergency parole have to surrender before the Jail Authority within 15 days but the convict failed to surrender in time and surrendered himself on 29.04.2023 i.e. 21 days late surrender. Hence, in view of above, the convict Mukesh S/o Moti Lal has violated terms and conditions mentioned in the parole order and jail rules. He may be punished as per provisions of Delhi Jail Manual 2018...”

7. This Court has also gone through the judicial appraisal order dated 26.05.2023 passed by the learned District and Sessions Judge, and the same is reproduced as under:

“...Heard, abovementioned CTP in the presence of Sh. Amit kumar and Sh.Naresh, AS and Sh. Amit Goswami, Welfare officer, He may be punished for stoppage of 15 days canteen facilities to approval by the Hon'ble District & Session Judge...”

8. Thus, this Court notes that the punishment ticket awarded to the petitioner is on the ground that he had surrendered late by 21 days, after the emergency parole granted to him had expired.

9. To appreciate the contentions raised before this Court, a cursory reference to Rule 1270 and Rule 1271 of the Delhi Prison Rules is necessary which deal with punishments for prisoners and the classification of punishments. The same are reproduced hereunder:

“1270. No punishment or denial of privileges and amenities, or no transfer to other prisons with penal consequences, shall be imposed on prisoners without judicial appraisal.

1271. The following punishment(s) may be awarded by the Superintendent to prisoners for committing any prison



offence. These are classified into minor punishments and major punishments.

(a) Minor Punishments

I. Formal warning which shall be personally addressed to the prisoner by the Superintendent and recorded in the punishment book.

II. Loss of privileges given to the prisoners in detention for a maximum of one month

III. Forfeiture of earned remission up to ten days.

(b) Major Punishments

I. Forfeiture of remission up to a period of thirty days at any one time or with the approval of the Inspector General remove a prisoner from the remission system up to a period of six months; Provided that the Inspector General shall have power to forfeit all earned remissions, other than remissions given by the Government, or to remove a prisoner from the remission system for the entire period of his imprisonment;

II. Stoppage of recreational facilities up to a period of one month or canteen facilities for a period of 1 month or stoppage of interviews for a period of up to three months;

III. In case of breaches and violations in conditions of release on parole or furlough, not counting the said period towards imprisonment.

IV. Segregation up to a period of three months and with the sanction of the Inspector General, up to a period of six months.

V. Monitoring under watch and security

VI. In case of any damage to Government property, recovery of cost for such damage after proper enquiry effective with judicial appraisal

VII. Inmate calling system stoppage up to 1 month

VIII. Forfeiture of recovered/ seized money”

10. This Court has also gone through the procedure laid down for awarding punishment to prisoners in Delhi Jail Rules, 2018, which reads as under:

“1272. 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. The order of punishment should also be communicated to the concerned prisoner.

1273. 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.

1274. In respect of offence committed by the prisoner which is punishable both under the existing criminal laws and prison offences, the prisoner should be punished by the Superintendent for Prison Offence & be prosecuted for the offence before the court of law.

1275. No prisoner should be punished twice for the same offence by the same authority”.

11. Furthermore, Section 53 of Delhi Prisons Act, 2000 also provides the procedure for conducting enquiries for the award of punishment, which is reproduced hereunder for reference:

“53. Procedure for conducting enquiries for the award of punishment:



1. **No prisoner shall be awarded any punishment under Section 47 unless he has been informed of the offence alleged against him and given a reasonable opportunity of being heard in Defence.**
2. No prisoner shall be punished twice for the same offence;
3. Subject to the provisions of sub-section (1) and (2) above, the Superintendent may follow such procedure for the holding of enquiries including framing of charges against a prisoner, segregation of prisoners, pending enquiry, medical examination in case of enquiries, conduct of enquiry and other matter regarding request for appeal or revision, as may be prescribed."

(Emphasis supplied)

12. In the present case, this Court notes that the petitioner has been issued a punishment ticket dated 29.04.2023, and by way of same, he has been awarded one major punishment i.e. i) stoppage of canteen facilities for a period of 15 days and the same punishment is provided under Rule 1271(b) (II). Thereafter, the learned Inspecting Judge, Central Jail No. 14, Mandoli, had passed an order of judicial appraisal on 26.05.2023.

13. However, it is the grievance of the petitioner that he was not given any show cause notice or any opportunity to present his defence, which is in clear violation of Rule 1272 and 1273 of Delhi Prison Rules, 2018 and Section 53 of Delhi Prison Act, 2000. The status report filed on record is silent on the aspect of procedure followed for awarding punishment ticket to the petitioner herein, *inter alia*, also on whether any show cause notice was issued to the petitioner before awarding him a major punishment.



14. The Co-ordinate Bench of this Court in case of *Vipin Sharma v. State (Govt. of NCT of Delhi)* 2022 SCC OnLine Del 4928, Co- had quashed a punishment ticket since the procedure as provided under the Act and the Rules was not followed before awarding a major punishment to the petitioner therein. The relevant observations are as under:

“6. I am of the considered view that the stoppage of Mulakat is a major punishment. Once a procedure for awarding the punishment has been prescribed in the Delhi Prison Rules, the same shall be complied with in its true letter, spirit and intent. Rule 1272 mandates that before awarding the punishment, the prisoner should be given: (i) Written notice, (ii) Calling him to show cause with reference to alleged violation of the jail rules and (iii) The order of punishment to be communicated to concerned prisoner.

8. Showing of punishment ticket by no stretch of imagination can be said to be compliance of Rule 1272. The showing of punishment ticket is not akin to giving a show-cause notice. The show-cause notice requires that the prisoner/inmate should be put to notice and he must be informed in writing that he is required to respond to the charges levelled against him as well as the basis for those charges and the punishment which can be given to him in case his response is found unsatisfactory. The punishment ticket produced hereinabove has already found the petitioners guilty of violation of Prison Jail Rules. Only the punishment remained to be ascertained which has been done subsequently through the handwritten note. The punishment ticket, hence, is not a show-cause notice and the same falls foul of Rule 1272.”

(Emphasis supplied)

15. The Co-ordinate Bench in case of *Chander Prakash v. State of NCT of Delhi W.P. (CRL.) 2457/2022*, had taken note of non-



compliance of Rules 1272 and 1273, and had directed that a fresh *post facto* hearing be given to the petitioner after issuing a show cause notice and granting him a hearing. The relevant observations are as under:

“13. It is evident that the procedure as mandated under Rules 1272 & 1273 was not complied with and there is nothing on record to support the case of the State. Further, just showing the written punishment tickets to the petitioner may not account to compliance with Rules 1272 & 1273 since stoppage of Mulakat and Canteen facility are major punishments, the procedure ought to have been strictly complied with.

14. Further, the appraisal order dated 09th September, 2022 passed by Ld. Additional District and Sessions Judge while noting the contention of the petitioner relating to the non-compliance of procedure, did not go further and advert to the same while analyzing the contentions and rejected the said application which had been filed by the petitioner for quashing of the punishment tickets.

15. This Court also in Dalip Singh v. State (GNCT of Delhi), W.P.(Crl.) No. 633/2019, decision dated 01st May, 2019, noted that the defence of the petitioner was not noted in any of the documents, in violation of the Delhi Prison Act. Also, in Praveen Rana v. State (GNCT of Delhi), W.P.(Crl.) No. 242/2022 decision dated 29th March, 2022, this Court had directed post facto hearing to be granted by the Jail Superintendant considering the petitioner was now fully aware of the charges against him and there is was no requirement of issuance of a fresh show cause notice. A view was also taken in Rana Pratap Singh v. State (supra), where the Superintendent Tihar Jail was directed to give re-hearing to the petitioner and record his defence and return a finding in accordance with law and procedure.

16. Accordingly, in consonance with the above decisions and considering that the record does not show proper compliance with Rules 1272 & 1273 (or of Rule 1275), it



is directed that the respondent authorities will issue a notice to the petitioner for a post facto hearing, record his defence after noting the statement of the witnesses and then return a finding in accordance with law and procedure, whether the petitioner would still be liable for these punishments and if so, the quantum of such punishment. 17. Fresh decision would be taken by the Jail Superintendent after granting a post facto hearing, as directed above, without reference to the impugned punishment tickets and the appraisal order subsequent thereto.”

16. Recently, the Co-ordinate Bench in case of ***Chander Kant Jha v. State of NCT of Delhi W.P.(CRL.) 2272/2022*** had taken note of various decisions passed by this Court in respect of issue under consideration, and had observed as under:

“9No doubt that the word used in Rule 1272 is „should“ as opposed to the word „shall“ in Rule 1273, however, this Court in Chandrakant Jha (supra); Dalip Singh v. State (GNCT of Delhi), W.P.(CRL) 1849/2021, decided on 18.02.2022; Praveen Rana v. State (GNCT of Delhi), W.P.(CRL) 242/2022, decided on 29.03.2022 and Vipin Sharma v. State (GNCT of Delhi), W.P.(CRL) 44/2021, decided on 18.08.2022, has repeatedly held that Rule 1272 mandates issuance of show-cause notice to the inmate and the Rule must be complied in its true letter, spirit and intent and wherever the procedure was not followed, matters were remanded back to the Respondent authorities to issue a show-cause notice and hold an enquiry as envisaged in the Rules 2018, afresh.”

17. Most recently, this Bench on 12.03.2024, in similar facts and circumstances in case of ***Gulshan @ Sandeep @ Monu v. State (NCT of Delhi) W.P. (Crl.) 2723/2023***, had quashed a punishment ticket which had been awarded to a prisoner in violation of Rules 1272 and



1273 of Delhi Prison Rules. The observations of the said decision are extracted hereunder:

“20. Thus, this Court is also of the opinion that it is mandatory as per Rule 1272 that a show cause notice is issued to a prisoner for committing any prison offence, before a punishment is awarded to him. It is also mandatory as per Rule 1273 that the Jail Superintendent holds an enquiry in a quasi-judicial manner.

21. Jail administration is run by its own rules, which are governed by the Delhi Prisons Act and the Delhi Prisons Rules. The under- trials as well as the convicts i.e. the prisoners are also governed by the said rules while they are imprisoned. **Any violation of such Rules will invite its own repercussions.** To put in simpler words, a prison is also a reformation home which is run by its own rules and discipline. This is to be understood also in the background of the fact that a prison in India, is not considered as punishment home, but as reformation home. Thus, the essence of good jail administration also lies in the discipline which is expected to bring reform in the prisoners. Needless to say, not all prisoners can be reformed which is a reality and while some may repent, some may not.

22. However, there no denying the fact that in case, a prisoner violates any of the prison rules or commits any prison offence, it will invites legal consequences. In the present case, the violation on the part of petitioner was that when he was released on emergency parole during the Covid-19 pandemic, he was re-arrested on 02.03.2022 for committing another offence while being on parole. Due to this conduct, the petitioner was issued a punishment ticket and was thereafter awarded three major punishments, an order which was confirmed by way of judicial appraisal. There is no dispute on the fact that the petitioner now stands convicted in the case in which he was re-arrested on 02.03.2022, the ground on the basis of which punishment ticket was issued to him.

23. The jail authorities, no doubt, are bound by the Delhi Prison Rules. However, at the same time, while the



authorities have the discretion to hold enquiry and award punishments under the Delhi Prison Rules, **the discretion cannot be unbridled and cannot be exercised against the rules of fair trial, enquiry or justice.**

24. It is important to emphasize that the foundational tenets of principles of natural justice also extend their protective ambit to prisoners. **Even within the confines of prisons, though the prisoners are deprived of their liberty, yet in situations where they are accused of committing any prison offence, they are entitled to an opportunity to present their defence, as per the prison law and rules, to ensure that a correct and unbiased decision is taken by the jail authorities.** This principle of natural justice is embodied in the Delhi Prisons Act as well as Delhi Prisons Rules also.”

(Emphasis supplied)

18. In the case at hand, neither a show cause notice was issued to the petitioner nor was any enquiry conducted by the jail authorities before awarding major punishment to the petitioner. As already discussed above, when a punishment is to be awarded to a prisoner alleging violation of Prison Rules, show cause notice has to be given to him in writing so as to afford him a reasonable opportunity of providing his defence. This process is in conformity with the principles of *natural justice* and *audi alteram partem*.

19. Thus, the punishment ticket dated 29.04.2023, and all consequent orders are set aside and the matter is remanded back to the jail authorities for deciding the issue of award of punishment afresh, in relation to the prison offence in question, after issuing show cause notice to the petitioner and by following the procedures as laid down under the Delhi Prisons Act, 2000 and Rules thereof.



20. In above terms, the present writ petition is disposed of.
21. A copy of this order be sent by the Registry to the Jail Superintendent concerned.
22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 19, 2024/ns