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

% *Date of decision: 6<sup>th</sup> August, 2024*

+ W.P.(CRL) 2242/2023 & CRL.M.A. 21008/2023

GHANSHYAM @ JAVED

.....Petitioner

Through: Mr. Shannu Baghel, Mr. Sudhir Kumar, Mr. Vivek Kumar, Mr. Ganpat Ram & Ms. Anita, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Yasir Rauf, ASC, Crl. with Mr. Alok Sharma & Mr. Vasu Agarwal, Advocates for State.  
S.I. Ashok Kumar, PS Civil Lines, Delhi.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (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 quash the impugned Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 issued by the Jail Authorities and subsequent confirmation of the same by the Inspecting Judge and Principal District and Sessions Judge, Headquarters, Delhi *vide* Orders dated 09.05.2023 and 02.06.2023.

2. It is submitted that the petitioner is a convict for an offence punishable under Section 302 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) and is undergoing life imprisonment in relation



to the FIR No. 07/2021 registered under Section 302 of IPC, 1860 at Police Station Civil Lines, Delhi.

3. It is submitted that the conduct of the petitioner in the jail has been completely satisfactory during the entire period of his incarceration and he has an unblemished record. The petitioner has been regularly released on parole/furlough at intervals for maintaining social ties with the family and had also been released on Emergency Parole on account of COVID-19 Pandemic.

4. It is also submitted that the petitioner because of his good and satisfactory conduct, was released on emergency parole for a period of four weeks w.e.f. 23.05.2020 which was extended from time to time till 14.03.2021, after which he surrendered himself on time.

5. The petitioner was also released on furlough for a period of two weeks on 06.01.2023 and again he surrendered himself on 02.01.2023.

6. It is submitted that the petitioner after his surrender to the Jail Authorities, the Jail Authorities initiated punishment proceedings against the petitioner on the ground that he was found in semi-unconscious state and seemed to be drunk. The petitioner was thus, granted the punishment by the Jail Authorities and *his mulakat and canteen facility was stopped by the Jail Authorities for a period of 15 days.*

7. The petitioner was again awarded *punishment on 24.01.2023 for alleged recovery of loose tobacco during the surprise search.* It is claimed that no such recovery of loose tobacco ever took place from the petitioner.

8. Again on 27.01.2023, the petitioner found in suspected inebriated condition, was tested for drug and was found to be positive for morphine/smack intake. The petitioner was granted punishment and again



*his mulakat and canteen facility were stopped by the Jail Authorities for a period of 15 days.*

9. It is claimed that all these three Punishment Tickets have been awarded mechanically by the Jail Authorities and approved by the learned Inspecting Judge, without giving any opportunity of being heard to the petitioner.

10. These impugned Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 have, therefore, been challenged on the ground that such impugned punishments would have a rippling effect on the unblemished and impeccable jail record of the petitioner thereby disentitling him from various other facilities provided under the Jail Manual.

11. Moreover, the alleged consumption of alcohol by the petitioner before he surrendered, is admitted but it is asserted that no Rule under the Jail Prison Manual, 2018 provides for punishment for consumption of alcohol during the release of a prisoner on furlough/parole. Admittedly, the petitioner did not misbehave with the Jail Authorities. Even though the petitioner surrendered himself in semi-unconscious state.

12. It is further claimed that the alleged consumption of morphine was completely concocted by the Jail Authorities. Without admitting, even if it is considered that the petitioner had consumed morphine, it was the duty of the Jail Authorities to report the matter before the local Police Station as mandated under Rule 1269, Sub-Rule (LIV) of Delhi Prison Rules, 2018. The failure on the part of the Jail Authorities to comply with the mandatory provision of Jail Prison Rules, 2018 is a serious lapse on the part of the Jail Officials which creates a doubt about the concocted story. Admittedly, neither morphine and nor any other form of alleged smack was recovered



from the possession of the petitioner.

13. The impugned Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 have also been challenged on the grounds of there was no hearing given to the petitioner by the Jail Authorities. The imposition of such punishment to the petitioner would disentitle the petitioner from his periodical release on furlough and Parole as the same require three consecutive Annual Good Conduct Remission (AGCR).

14. Learned counsel for the petitioner has placed reliance on the decision in Vipin Sharma vs. State (Govt of NCT of Delhi), decided on 18.08.2022 by the Co-ordinate Bench of this Court *vide* W.P.(CRL) 44/2021.

15. Therefore, the impugned Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 be quashed.

16. **The Status Report** has been filed on behalf of the State, wherein it is submitted that the record of the petitioner would reveal that he has been convicted in three criminal cases and has been in jail since 2001 and during his confinement in jail, punishments have been imposed from time to time, the first punishment being on 29.08.2008 and the last punishment on 24.01.2023. In all, the petitioner has been punished 16 times.

17. It is further submitted that the case of the petitioner is covered under Rule 1252 (a) of Delhi Prison Rules, 2018 which states that the convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years, including remissions but not less than 14 years of actual imprisonment.

18. Moreover, the case of the petitioner had been placed before the Sentence Review Board five times i.e., 11.05.2020, 11.12.2020, 25.06.2021, 21.10.2021 and 30.06.2023. But considering that the petitioner has been



convicted of murder offence of an on duty police official, having previous criminal history, unsatisfactory conduct in jail having multiple punishments, perversity of crime, non-reformative attitude, involvement in another case during parole, strong objection by police etc., *the Sentence Review Board rejected the premature release of the petitioner at this stage.*

19. **Further Status Report** has been filed on behalf of the Superintendent, Central Jail No. 14, Mandoli, Delhi-93, wherein it is stated that the petitioner as on 19.09.2023 has undergone 20 years 2 months and 3 days of actual custody without remission and earned remission of 3 years 3 months and 2 days. It is submitted that the conduct of the petitioner has been unsatisfactory with multiple punishments.

20. **Submissions heard.**

21. The three Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 issued by the Jail Authorities read as under: - ***Add column of punishment***

| S.No. | Punishment Ticket Date | Remarks                                                                                                                                                                                  |
|-------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | 23.01.2023             | The petitioner surrendered on time i.e., 20.01.2023, but he was in semi-unconscious state and seemed to be drunk. On examination by Doctor, he was found positive for consuming Alcohol. |
| 2.    | 24.01.2023             | The loose tobacco was recovered from the possession of petitioner                                                                                                                        |



|    |            |                                                                                                                                                                                    |
|----|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |            | during a surprise search.                                                                                                                                                          |
| 3. | 27.01.2023 | The petitioner was taken to OPD on 24.01.2023 by Shri Balwan, AS in suspected inebriated condition, where he was tested for drug and was found positive for morphine/smack intake. |

22. The aforesaid three Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 issued by the Jail Authorities, fall in the category of *Major Punishment under Rule 1271 of the Delhi Prison Rules, 2018* which reads as under: –

***“Rule 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.”*

23. The present case, in all the three Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 the petitioner has been awarded major punishments.

24. The **procedure for awarding the punishment** has been defined under Rule 1272 of the Delhi Prison Rules, 2018 which reads as under: -

*“Rule 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.”*

25. From the Rule 1272 of the Delhi Prison Rule, 2018, it is evident that 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.

26. As is reflected from the record of the respondent itself, 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 punishment. The procedure as mandated under Rule 1272 of the Delhi Prison Rules, 2018 has, therefore, been totally ignored by the Jail Authority.

27. It is pertinent to observe that the *first Punishment Ticket dated 23.01.2023* pertains to the petitioner being in semi-unconscious state and seemed to be drunk, while surrendering himself on time i.e., 20.01.2023. On examination by Doctor, he was found positive for consuming Alcohol.

28. It is the respondent's own case that the petitioner had consumed alcohol before a date of surrender and not after surrendering himself in jail on 20.01.2023. To say that he was in semi-unconscious condition, there should have been a Show-cause Notice to explain his condition. In the absence of any such opportunity, merely because the petitioner appeared to be in an inebriated condition could not lead to conclusion of Jail Rule violation against him, resulting in the awarded punishment.

29. The *second Punishment Ticket dated 24.01.2023* pertains to the petitioner where the loose tobacco was recovered from his possession during a surprise search. However, on a specific query, the learned Additional Public Prosecutor on behalf of the respondent has submitted that no seizure memo of the said loose tobacco so recovered from the petitioner, was prepared. In the absence of any cogent evidence, it is only the averments which have been made the basis of conviction, which is nothing, but an arbitrary decision which is not supported by any cogent explanation. Moreover, the procedure as detailed in Rule 1272 of the Delhi Prison Rules, 2018 has also not been followed.

30. The *third Punishment Ticket dated 27.01.2023* pertains to when the



petitioner was taken to OPD on 24.01.2023 by Shri Balwan, AS in suspected inebriated condition, where he was tested for drug and was found positive for morphine/smack intake. Though it has been claimed that the Blood Test was done but there is no Report annexed along with the Punishment Ticket dated 27.01.2023. Moreover, merely because there was some drug found in the blood which could also be on account consumption of any medicine, there cannot be a presumption that the petitioner had consumed any drug; a Show-cause Notice seeking any explanation from the petitioner to explain the presence of drug in his blood, in the circumstances, was mandatory. Any conclusion of alleged consumption of drug/smack intake is arbitrary which is not supported by any facts without any effort to ascertain if it was on account of consumption of medicine, is completely arbitrary.

31. Similar observations have made in the case of Vipin Sharma, (supra), Devender @Monu vs. State (NCT of Delhi), decided by the Co-ordinate Bench of this Court on 27.04.2023 vide W.P.(CRL) 396/2023 and Chander Kant Jha vs. State of NCT of Delhi, decided by the Co-ordinate Bench of this Court on 01.02.2024 vide W.P.(CRL) 2272/2022

32. To conclude, on account of not following the appropriate procedure for inflicting the aforesaid Major punishment as detailed in Rule 1272 of the Delhi Prison Rules, 2018 and the allegations not being substantiated by any cogent evidence, the present petition is allowed and the three Punishment Tickets dated 23.01.2023, 24.01.2023 and 27.01.2023 issued by the Jail Authorities are hereby set aside.

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33. Accordingly, the present petition along with pending application is disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**AUGUST 6, 2024**  
**S.Sharma**