



2024:DHC:6151



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 6th August, 2024+ W.P.(CRL) 2587/2023

PURAN PRASAD

.....Petitioner

Through: Ms. Sunita Arora, Advocate
(DHCLSC).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amol Sinha, ASC (Criminal) for
the State with Mr. Kshitiz Garg, Mr.
Ashvini Kumar and Ms. Chavi
Lazarus, Advocates with SI
Roaghubir Prasad, PS Khyala.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Writ 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, for quashing of *Punishment Ticket No. CJ-4* dated 26.08.2021 and directing the Superintendent, Central Jail No. 2, Tihar, to count the custody of the petitioner during his release on Emergency Parole, in his sentence.

2. It is submitted that the petitioner had been awarded imprisonment for life and fine under Sections 302/24 of IPC, 1860 in FIR No. 280/2012 registered at Police Station Khyala, Delhi and has been in jail since about nine years. He was released from Central Jail No. 4, Tihar, on 05.03.2020

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for a period of four weeks on *Parole* because of nation-wide Lockdown and it was extended from time to time. The petitioner was to surrender to the Jail Authorities on 19.03.2021 but because of emerging second wave of Covid-19 and poor condition of the family members, the petitioner failed to surrender before the Jail Authorities, on time.

3. On 26.08.2021, he was re-arrested *vide* DD No. 06A dated 26.08.2021 under Section 41.1 (A) Cr.P.C, Police Station Special Cell. After his re-arrest, he was lodged in Central Jail-04, Tihar. A Punishment Ticket dated 26.08.2021 was issued against him by the Jail Superintendent, Central Jail-04, Tihar, Delhi. A warning had been given to him to be careful in future.

4. It stated that the respondent failed to issue Notice to the petitioner thereby deprived him to take defense as is mandated under *Rule 1272 and 1273, Delhi Prison Rules, 2018*.

5. The petitioner filed an Application dated 07.05.2023, before the Jail Superintendent, CJ-02, Tihar, Delhi, for counting the custody of the petitioner during his release in emergency Parole, in his sentence. However, his Application was rejected on the ground of *Escape and Violation of conditional release*. It is submitted that the Punishment Ticket has been issued by the respondent, arbitrarily and mechanical manner, in violation of the provisions of Delhi Prison Rules, 2018.

6. It is further submitted that earlier Parole was granted by this Court in *W.P.(Crl.) 1845/2022* titled Puran Prasad vs. State of (G.N.C.T.) of Delhi, *vide* Order dated 28.09.2022, for a period of three weeks from 10.10.2022 to 30.10.2022 and he had duly abided by the terms and conditions of the Order. Moreover, in a similar case of a re-arrested inmate, Sh. Ram Dass, the Superintendent, CJ-02, Tihar, has counted the custody of the above inmate



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during his release on emergency parole. However, the Furlough Application of the petitioner is not being considered on the ground that his period of emergency parole is not counted toward his sentence.

7. The petitioner has relied on the Order dated 18.08.2022, passed by a Coordinate Bench of this Court in *W.P.(Crl.) 44/2021* titled as *Vipin Sharma Vs State (Govt of Nct Of Delhi and W.P.(Crl.) 92/2021* titled as *Vivek Kumar Sharma Vs State (Govt of Nct Of Delhi)* , wherein it has been observed that before issuance of the Punishment Ticket, the Delhi Prison Rules must be scrupulously followed. It is, therefore, submitted that the Punishment Ticket dated 26.08.2021, be quashed and the period of Emergency Parole, be counted towards his custody.

8. Learned counsel for the petitioner, placed reliance on *W.P.(CRL) 396/2023*, titled as *Devender @ Monu vs. State (NCT of Delhi)* dated 27.04.2023 and *W.P.(CRL) 1460/2024*, titled as *Puran Prasad vs. State NCT of Delhi*, dated 09.05.2024.

9. *Learned ASC for the State*, has opposed the Application and has submitted that after the Emergency Parole, the petitioner was liable to surrender on 19.03.2021, which he failed to do. A warning, which is a minor punishment, has been imposed, in accordance with the Rules. There is no merit in the Petition, which is liable to be dismissed.

10. Learned ASC for the State, has placed reliance on *W.P. (CRL) 2272/2022*, titled as *Chander Kant Jha vs. State of NCT of Delhi*, dated 01.02.2024.

11. **Submissions heard.**

12. In the present case, admittedly, the petitioner who is serving rigorous imprisonment for life in FIR No. 280/2012 registered under Sections 302/24



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of IPC, 1860 at Police Station Khyala, Delhi, and was released on parole for one month by the Order of this Court *vide* Order dated 05.03.2020 and the date for his surrender was fixed for 06.04.2020. However, the nation-wide lockdown on account of COVID-19 Pandemic, was imposed by the NCT of Delhi *vide* Notification dated 23.03.2020 and a Notification of amendment in Delhi Prison Rules, 2018 was issued, whereby the Rule 1202(ii) and Rule 1212-A was added in regard to the Emergency Parole, wherein it was provided that it shall be the discretion of the Government to decide as to whether the period spent by the prisoner outside the prison on this emergency Parole shall be counted towards the sentence of the prisoners or not.

13. *Vide* Notification dated 27.03.2020, Government of NCT of Delhi further ordered that the convicts who are out on Parole or Furlough would be granted eight weeks of emergency Parole. The remaining portion of their on-going Furlough/Parole would be treated as suspended/lapsed on grant of emergency Parole and that eight weeks emergency parole to the eligible convicts shall be counted towards the sentence of the prisoner.

14. In the present case, the petitioner being already on Parole/Furlough by the Order of this Court granted *vide* Order dated 05.03.2020, he got the benefit of the aforesaid Notification of NCT of Delhi, whereby his Parole w.e.f. 23.03.2020 was treated as emergency Parole and the entire period of emergency Parole was to be treated as a period to be adjusted in the sentence.

15. Unfortunately in the present case, while the emergency Parole of the petitioner got extended by the Orders/Notifications of Government of NCT of Delhi from time to time, but as per the petitioner's own submissions, he



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had the information and had been asked to surrender on 19.03.2021 but *because of his family difficulties and his family situation being bad*, he could not surrender before the Jail Authority, on the due date. Eventually, he was arrested by the Police on 26.08.2021 and was brought back to the jail. It is not a case where there was either any inadvertence or non-communication of date of surrender to the petitioner. The petitioner was well aware that he was required to surrender himself before the Jail Authorities on 19.03.2021, but he failed to do so.

16. The case of the petitioner was duly considered by the Jail Authorities and a reference was made to *Rule 930 of Delhi Prison Rules, 2018* which provided that every prisoner who does not report to the Prison Authorities after the period of Parole/Furlough or interim bail shall be treated as if he has escaped from the prison.

17. *Rule 738 of the Delhi Prison Rules, 2018* provided that the periods which would not count towards sentence are those where the prisoner has escaped or violated the conditions or committed violation of conditional release.

18. In the present case, the petitioner despite having knowledge of date of surrender, failed to do so and also did not inform or intimate about his inability to surrender to the Jail Authorities.

19. Moreover, it is not as if he has himself surrendered before the Jail Authorities but had to be arrested on 26.08.2021 from his residence by the Police.

20. As per the Rules, the petitioner is to be treated to *have violated the conditional Release and is deemed to have escaped* and, therefore, he cannot be granted the benefit of the period of Parole to be counted towards his



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period of sentence.

21. In view of the foregoing discussion, there is no infirmity in the *Punishment Ticket CJ No. 04*, dated 26.08.2021 issued by the Jail Authority denying to give him the benefit of emergency Parole from being added to his period of sentence.

22. *Accordingly, the present petition is dismissed.*

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 6, 2024/RS

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