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

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Reserved on: 08.01.2024
Pronounced on: 12.03.2024+ **W.P.(CRL) 2723/2023**

GULSHAN @ SANDEEP @ MONU Petitioner

Through: Mr. Kunal Malhotra and Mr.
Lalit Choudhary, Advocates

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Sanjay Lao, Standing
Counsel for the State with SI
Gagandeep, P.S. Prashant
Vihar.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of present petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the petitioner seeks grant of following reliefs:

“a. Issue a writ in the nature of Certiorari quashing the Order no. F. W(3594370/CJ/LEGAL/2023/30790 Dated 17-05-2023. passed by the Respondent; and



b. Issue a writ in the nature of Certiorari quashing punishment ticket no. 22 dated 09.03.2022 issued by Jail Superintendent, CJ-02, Tihar Delhi and Judicial Appraisal Order dated 19.05.2022; and

c. Issue a writ in the nature of mandamus directing the respondent to release the petitioner on 1st Spell of Furlough of 03 weeks in FIR No. 356/2012, PS: Prashant Vihar, U/s 364A/392/394/397 IPC& 27 Arms Act; or”

2. The petitioner is presently confined in Central Jail No. 02, Tihar, New Delhi. He was convicted for commission of offence under Sections 364A/392/394/397 of Indian Penal Code, 1860 ('IPC') and Section 27 of Arms Act in case arising out of FIR bearing no. 356/2012 registered at Police Station Prashant Vihar, Delhi and by virtue of order on sentence dated 01.07.2016, he was sentenced to undergo rigorous imprisonment for life and payment of fine of Rs. 30,000/-, and in default of payment of fine, to undergo simple imprisonment for 18 months. His appeal against conviction i.e., CRL.A. 834/2016 was dismissed by this Court *vide* judgment dated 17.01.2019.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner had approached the competent authorities for grant of first spell of furlough for three weeks, however, his application for the same was rejected by the authorities *vide* order dated 17.05.2023. It is stated that the reason for the rejection of furlough was that he was released on emergency parole on 16.05.2021, at the time of Covid-19, but he was re-arrested during the period of parole in another FIR No. 114/2022, registered under Sections 356/379/411/34



of IPC, P.S. Dwarka South, Delhi. It is argued that the petitioner has already been convicted in the said FIR and *vide* order dated 25.05.2023, he has been sentenced to period undergone i.e. 11 months by the learned Trial Court. It is argued that the punishment ticket no. 22, dated 09.03.2022, and the appraisal of the punishment by learned Principle and Sessions judge *vide* order dated 19.05.2023 are both unjust, unfair, arbitrary, and against the principles of law. In this regard, it is submitted that the petitioner has been awarded a major punishment, for the reason that he was re-arrested while being on parole, however, the jail authorities have not followed the process as mandated by Rule 1272 and 1273 of Delhi Prison Rules, 2018. It is also argued that neither any show cause notice was given to the petitioner nor any opportunity of being heard or filing any reply. Therefore, it is prayed that the punishment ticket no. 22 dated 09.03.2022 be quashed and the petitioner be granted furlough for a period of three weeks.

4. On the other hand, learned Standing counsel appearing on behalf of the State argues that the petitioner, while he had been released on on emergency parole on 16.05.2021, was re-arrested on 02.03.2022 in another case bearing FIR No. 114/2022, P.S. Dwarka South, Delhi, under Sections 356/379/411/34. It is stated that the petitioner has also been convicted by the learned Trial Court in the said case *vide* judgment dated 25.05.2023. It is also argued that since the petitioner had committed another offence while being on emergency parole and had been re-arrested, he was issued a



punishment ticket by the jail authorities on 09.03.2022 for violation of Delhi Prison Rules, 2018, which had then received judicial appraisal *vide* order dated 07.07.2022. It is also pointed out that the petitioner is also involved in several other criminal cases. Therefore, in these circumstances, it is prayed that present writ petition be dismissed.

5. This Court has heard arguments addressed on behalf of the petitioner as well as State, and has gone through the material placed on record.

6. In the present case, the application filed by the petitioner seeking release on furlough was rejected *vide* order dated 17.05.2023, by the respondent/competent authority, on the ground that the petitioner was re-arrested on 02.03.2022 in another FIR, when he had been released on emergency parole in view of Covid-19. The relevant portion of rejection order reads as under:

“I. He was released on emergency parole on 16.05.2021 and further extended time to time in view COVID-19 and re-arrested on 02.03.2022 during emergency parole in case FIR No. 114/2022; u/s 356/379/411/34 IPC, PS-Dwarka South and admitted in jail 08.03.2022.

II. Rule 1224(iii) of Delhi Prison Rules-2018 states that *"the prisoner who abscond while released on parole or furlough shall not be eligible to be released on furlough"*.

III. His application was not recommended by Superintendent Jail”.

7. In this background, it is to be noted that on 09.03.2022, the jail authorities had awarded a punishment ticket to the petitioner in



relation to his act of indulging in criminal activity while being on parole. The contents of punishment ticket no. 22, dated 09.03.2022, are extracted hereunder:

“On 16.05.2021, convict CT. CT. Gulshan s/o Bhim Sen was released on Emergency parole for a period of 90 days, granted by Govt. of NCT of Delhi vide order NO. F.No. 18/191/2015/HG/1146-1153 dated 14.05.2021. The same was further extended time to time. However, in the meantime, he was re-arrested in another case FIR No. 114/2022, U/S 356/379/411/34 IPC, P.S. Dwarka (South) and admitted in jail on 08.03.2022.

Such act of indulging in anti-social and criminal activities and not maintaining peace and good behaviour during release on Emergency Parole, on the part of convict CT. Gulshan s/o Bhim Sen, is a violation of prison rules. Hence, he may be punished as per provisions of Delhi Jail Manual”.

8. Thereafter, the aforesaid punishment awarded to the petitioner was given judicial appraisal *vide* order dated 07.07.2022 passed by learned Inspecting Judge, Central Jail No. 2, Tihar, which was communicated to the Superintendent Central Jail No.02, Tihar, New Delhi on 19.05.2023. The effective portion of the order dated 07.07.2022 is reproduced as under:

“Both the prisoners have been produced through video conferencing. Submissions heard. Record perused.

The allegations against the prisoner Gulshan as per the punishment ticket are that he was released on parole for a period of 90 days, granted by Government of NCT of Delhi vide order dated 14.05.2020, and same was extended from time to time. However, in the meantime he was arrested in another case and admitted in jail on 08.03.2022.



The conduct of the prisoner was found in violation of Jail Rules and he was awarded punishment of stoppage of mulakat, canteen and vodafone facility.

The registration of case FIR against both the prisoners and admission in the jail is a matter of record. I have no hesitation to place reliance upon the report submitted by the jail authorities. Hence, the punishment awarded by the Jail Authorities against both the prisoners Amar Pal S/o Chanda Ram and Gulshan S/o Bhim Sen may be approved”.

9. This Court also notes that with respect to FIR No. 114/2022, the petitioner has already been convicted by the learned MM-04, South West, Dwarka Courts, in case titled ‘*State v. Gulshon & Monu*’. The relevant portion of order on sentence dated 25.05.2023 is reproduced hereunder for reference:

“Ld LAC for convict stated that convict was arrested on 02.03.2022 and was released on personal bond on 01.02.2023. Keeping in view the entire facts and circumstance and in the interest of justice, the convict Gulshan @, Monu stands convicted under Section 356/379/411/34 IPC and is sentenced for a period of 11 months. Benefit of section 428 Cr PC be given to the convict for the period already undergone”.

10. Thus, the questions which arise for adjudication in this case are as under:

I. *Whether the issuance of punishment ticket dated 09.03.2022 and the consequent proceedings including its judicial appraisal order dated 07.07.2022, are in violation of the rules contained in Delhi Prison Rules, 2018?*



II. *Whether the petitioner deserves the relief of grant of furlough for a period of three weeks?*

11. As regards the *first issue*, the Delhi Prison Rules, 2018 specifically provides that for committing any prison offence, a prisoner can be awarded punishment by the Jail Superintendent. In this regard, the relevant portion of Rule 1269 is extracted hereunder:

“1269. Following acts of the prisoners shall constitute prison offences:

(XXI)-Breach of the conditions of leave and emergency release”.

12. The punishments for prison offences fall under two categories i.e. minor punishments and major punishments. Rule 1270 and 1271, which deals with the issue in question, 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”

13. This Court has also gone through the procedure laid down for awarding punishment to prisoners in Delhi Prison 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 Distret 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 the 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”.

(Emphasis supplied)

14. Section 53 of Delhi Prisons Act, 2000 also provides the procedure for conducting enquiries for the award of punishment, which reads as under:

“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 Defense.**

(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)

15. Having taken note of the relevant provisions of Act and Rules, this Court notes that in the present case, the petitioner has been issued a punishment ticket no. 22, dated 09.03.2022, and by way of same, he has been awarded three major punishments i.e. i) stoppage of *mulakat*, ii) stoppage of canteen facility, and iii) stoppage of Vodafone facilities. These punishments are provided under Rule 1271(b) (II & VII). Thereafter, the learned Inspecting Judge, Central Jail No. 2, Tihar, AD&SJ, New Delhi District, Patiala House Courts, New Delhi, had passed an order of judicial appraisal on 07.07.2022.

16. 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.

17. In the background of these facts, this Court notes that in case of *Vipin Sharma v. State (Govt. of NCT of Delhi)* 2022 SCC OnLine



Del 4928, Co-ordinate Bench of this Court 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)

18. In case of *Chander Prakash v. State of NCT of Delhi W.P. (CRL.) 2457/2022*, the Co-ordinate Bench 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 Superintendant after granting a *post facto* hearing, as directed above, without reference to the impugned punishment tickets and the appraisal order subsequent thereto.”

19. 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.”

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.

25. In the present case, neither a show cause notice was issued to the petitioner nor was any enquiry conducted by the jail authorities before awarding three major punishments to the petitioner. As already discussed above, when a punishment is to be awarded to a prisoner alleging violation of Jail 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*.

26. Thus, this Court is of the view that the punishment ticket no. 22, dated 09.03.2022, and all consequent orders are set aside. However, since the ground for issuing punishment ticket to the



petitioner was his arrest in another criminal case, in which he now stands convicted also, 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 procedure as laid down under the Delhi Prisons Act, 2000 and Delhi Prisons Rules, 2018.

27. As regards the *second issue* i.e. whether the petitioner deserves to be released on furlough for a period of three weeks, this Court notes that the said relief has been denied to him on the basis of aforesaid punishment ticket awarded to the petitioner.

28. The Hon'ble Supreme Court in the case of *State of Gujrat v. Narayan* 2021 SCC OnLine SC 949 has held that the grant of furlough to a convict is aimed at breaking the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society. The relevant portion of the judgment reads as under:

“24. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context.

The principles are thus:

- (i) Furlough and parole envisage a short-term temporary release from custody;
- (ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;



- (iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;
- (iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough;
- (v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners”.

29. In Delhi Prison Rules, 2018, Rules 1197 and 1200 also provide insight as to what objects are achieved by releasing a convict on furlough. The said rules read as under:

“1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison.

1200. The objectives of releasing a prisoner on parole and furlough are:

- i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self-confidence,
- iii. To enable him to develop constructive hope and active interest in life,
- iv. To help him remain in touch with the developments in the outside world,
- v. To help him remain physiologically and psychologically healthy,



vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and

vii. To motivate him to maintain good conduct and discipline in the prison...”

30. In the present case, this Court notes that since the punishment ticket dated 09.03.2022 has been set aside on the ground that no hearing was granted to him before being awarded three major punishments and the denial of furlough is based on awarding of aforesaid punishment, the plea for grant of furlough will have to be deferred till the petitioner is given a hearing and the matter is decided afresh.

31. Since the right of furlough will be affected in case the fresh hearing, as directed above is delayed, it is directed that the jail/competent authority will decide the matter within a period of one month of receipt of this judgment. Thereafter, the prayer for grant of furlough to the petitioner shall also be considered afresh by the jail authorities and disposed of expeditiously.

32. In above terms, the present writ petition stands disposed of.

33. A copy of this judgment be forwarded to the Jail Superintendent concerned for information and compliance.

34. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 12, 2024/zp