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

+ **W.P.(CRL) 2937/2024**

VISHAL

.....Petitioner

Through: Mr. Naushad Ahmed Khan
(DHCLSC), Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Kshitiz Garg, Advocate for Mr.
Amol Sinha, ASC for the State with
SI K. L. Kuldeep, P.S.: K. Gate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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11.12.2024

By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of Punishment Ticket dated 30.03.2022 issued to him by the Deputy Superintendent Central Jail-12, Mandoli, Delhi.

2. Notice on this petition was issued on 23.09.2024.
3. Status Report dated 18.11.2024 has been filed.
4. Nominal Roll dated 10.12.2024 has also been received from the Jail Superintendent.
5. Mr. Naushad Ahmed Khan, learned counsel appearing for the petitioner submits, that the petitioner is serving life sentence for the offences under sections 364A/34 of the Indian Penal Code, 1860 in case FIR No. 378/1994 registered at P.S.: Kashmere Gate, Delhi and has served more than 14 years in judicial custody, not counting the remission of more than 03 years earned by him.



6. Mr. Khan submits, that as would be seen from the nominal roll, the petitioner has been admitted to parole on 03 earlier occasions and to furlough on 07 occasions over several years; and the allegation based on which the punishment ticket has been issued to him is that when he was released on furlough for a period of 02 weeks commencing 21.12.2020, he jumped furlough and surrendered on 30.03.2022, some 14 months late.
7. Learned counsel states, that it is matter of public record and knowledge that the period from March 2020 until the beginning of 2022 was covered by the then prevailing COVID-19 pandemic and there was uncertainty as to the date of surrender of convicts who had been released on emergency parole/furlough under the HPC Guidelines as well as under various orders of the Supreme Court made in *Suo-Motu* Petition (Civil) No. 01/2020.
8. Accordingly, Mr. Khan submits, that the petitioner surrendered late only by reason of the lack of clarity with regard to the date of his surrender. It is stated that upon expiration of his period of furlough, the petitioner went to the jail multiple times to surrender; however, each time he was sent back by the jail authorities who said that he did not need to surrender and that they would communicate the date on which he was required to surrender. It is submitted that thereafter, as soon as he was apprised of his date of surrender, the petitioner surrendered back to custody on 30.03.2022.
9. Learned counsel submits that it be noted that the petitioner was not required to be arrested; and that he surrendered voluntarily as soon as he learnt of the date of surrender.



10. Moreover, it is argued that Rule 1272 of the Delhi Prison Rules 2018 ('Delhi Prison Rules'), requires that a prisoner must be given a notice in writing, calling-upon him to show cause with reference to any alleged violation of the jail rules; and that any order of punishment is also required to be communicated to the prisoner.
11. Learned counsel further points-out that Rule 1273 of the Delhi Prison Rules also requires the Jail Superintendent to hold an inquiry in relation to every prison offence in a *quasi-judicial* manner, complete with recording the statements of all concerned witnesses and giving full opportunity to a prisoner to answer any allegations against him of infraction of any jail rules.
12. Mr. Khan submits that no notice in writing was ever issued to the petitioner for the alleged violation of having surrendered late after expiration of his furlough; nor was any opportunity given to him to explain his stand in relation to the delayed surrender.
13. To further throw light upon the petitioner's conduct in jail, Mr. Khan draws attention to a Certificate of Appreciation dated 26.01.2023 issued to the petitioner by the Prison Superintendent, Central Jail, acknowledging his "*participation in providing unstinted and invaluable assistance at Central Jail No. 12, Mandoli on the occasion of 74th Republic Day 2023*".
14. In the circumstances, it is argued that the impugned punishment ticket deserves to be quashed and set-aside.
15. On the other hand, Mr. Kshitiz Garg, learned counsel appearing on behalf of Mr. Amol Sinha, learned ASC for the State submits, that the petitioner was well aware of the fact that his 02 weeks of furlough



granted with effect from 21.12.2020 ran-out on 04.01.2021; and yet he surrendered back to custody only on 30.03.2022 and thereby jumped furlough.

16. Furthermore, it is argued that the petitioner was given an opportunity to explain his conduct and it was only subsequent to that, that the impugned punishment ticket was issued.
17. Upon being queried as to whether there is anything on record to show that the jail authorities took any steps to arrest the petitioner after expiration of the period of his furlough, *if* according to the jail authorities he was required to surrender, but was missing, Mr. Garg is unable to point to anything to that effect on record.
18. Needless to add that Mr. Garg also does not contest that the period for which the petitioner remained missing, was the period of the then prevailing pandemic.
19. Most importantly, Mr. Garg fairly submits that there is also nothing on record to show that any written notice was issued to the petitioner as required under Rule 1272 of the Delhi Prison Rules asking him to show cause against the issuance of the punishment ticket.
20. At this point it is necessary to notice Rules 1272 and 1273 of the Delhi Prison Rules, which read 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 in 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.”

(emphasis supplied)

21. Admittedly therefore no written notice was issued to the petitioner; nor does it appear that any *quasi-judicial* proceedings were conducted before issuing Punishment Ticket dated 30.03.2022, which is a clear infraction of Rules 1272 and 1273 of the Delhi Prison Rules.
22. Needless to add that the impugned punishment ticket which awards a major punishment would have serious consequences on the petitioner's record subsequently, including on the petitioner's plea for premature release or for other benefits to which he may be entitled in jail. Accordingly, non-compliance with the afore-noted prison rules, amounts not only to a breach of the rules prescribed for awarding prison punishments, but also amounts to violation of the principles of natural justice, and such breach cannot be ignored as being irrelevant or inconsequential.



23. In the circumstances, this court is persuaded to allow the present petition, thereby quashing Punishment Ticket dated 30.03.2022 issued to the petitioner; with a further direction that the petitioner's application for furlough dated 'nil' be now decided by the jail authorities expeditiously, in light of the fact that the punishment ticket stands quashed.
24. Petition stands disposed-of in the above-terms.
25. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 11, 2024

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