HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No. 2241/2023

Sambhunath Sasmal S/o Shri Kalipada, R/o Kismat Khera, Police Station Kolaghat, District East Mednipur (West Bangal) (At Present Confined In Central Jail, Jaipur (Raj.). Through His Father - Kalipada Sasmaal S/o Shri Govindo Sasmaal, Aged About 57 Years R/o Kismat Khera, Police Station Kolaghat, District East Mednipur (West Bangal).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj.).
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. Superintendent Central Jail, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Mr.T. C. Swami
For Respondent(s) : Mr.Vivek Choudhary, PP

JUSTICE ANOOP KUMAR DHAND

Order

06/12/2024

1. Matter comes up on an application (I/A No.1/2024) seeking amendment of the writ petition.

2. Application stands allowed for the reasons stated therein.

3. The petitioner is permitted to amend the petition. The amended petition has already been submitted on the record, challenging the validity of the impugned order.

4. With the consent of the counsel for the parties, arguments have been heard finally and this petition is decided by the present order.

5. The instant petition has been filed by the petitioner for transferring him to the Open Air Camp.

6. Vide impugned order dated 24.01.2024, the State-respondents have refused to transfer the petitioner to the Open Air Camp on the ground that the petitioner has been convicted for the offence under Section 392 IPC.

7. The contention of the learned counsel for the petitioner is that the petitioner is in custody since last more than 7 years 4 months & 17 days. Learned counsel for the petitioner has placed reliance on the judgments passed by the Co-ordinate Bench of this Court in the case of **Pooran Singh Vs. State of Rajasthan & Ors. : S.B. Criminal Writ Petition No. 322/2022** decided on 22.07.2022, **Satish @ Lilu Vs. State of Rajasthan & Anr. : S.B. Criminal Writ Petition No. 523/2019** decided on 04.06.2020 and **Sher Singh @ Sheru Vs. State of Rajasthan & Anr. : S.B. Criminal Writ Petition No. 525/2019** decided on 02.06.2020. Counsel submits that under the similar circumstances, directions have been issued to the authorities to transfer the accused persons to the open air camp, therefore, the similar order be passed in the instant case also.

8. Per contra, learned Public Prosecutor has opposed the prayer made by the learned counsel for the petitioner and has submitted that the petitioner has been convicted for the offence under Section 392 I.P.C. and looking to the seriousness of the

offence, the petitioner is not entitled to be shifted to the Open Air Camp.

9. Heard and considered the rival submissions made by the learned counsel for the parties and perused the material available on record.

10. It is true that no prisoner could claim transfer to Open Air Camp as a matter of right. The Rajasthan Prisoners Open Air Camp Rules, 1972 was framed primarily with an object to send a convict to Open Air Camp with the purpose to encourage good conduct, self-discipline and inculminating them to normal life. It is a method to reform the prisoners to the social environment and society as a whole. It is a reformatory concept. The law relating to reformation of the prisoner has been discussed at length vide several judgments by the Apex Court as well as by this Court as noticed in the aforesaid judgments.

11. In the opinion of this Court, attempt should always be made to reform a convict, if his/her performance, while in the judicial custody, has been found to be above board and he/ she has not been indulging in any other misadventure or activity which may harm the society. Merely, the conviction for a particular offence, cannot be a bar for considering the petitioner's case for shifting him to Open Air Camp. A straight jacket formula cannot be applied in all the cases. Rule 3 of the Rules of 1972 mentions word “ordinarily” and thus, the Open Air Camp Committee is required to examine independently each and other case.

12. Taking into consideration the facts of the present case and also the report, which is placed on record, this Court is satisfied that the petitioner has made out a case for being shifted

to Open Air Camp. Accordingly, the report of the Open Air Camp Committee is set aside and the petitioner shall be entitled to be shifted to Open Air Camp, as per the Scheme of the Rules of 1972 and necessary order in this regard shall be passed by the concerned Jail Authorities, within a period of one month henceforth and a copy of this order be sent to the concerned Jail Authorities for the said purpose.

13 In view of the above, the criminal writ petition is accordingly allowed.

(ANOOP KUMAR DHAND),J

Aayush Sharma /274