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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of decision: 21st April, 2025**
 + **W.P.(CRL.) 285/2025**

VIKAS SIDHU
 S/o Rattan Lal

....Petitioner

Through: Mr. Siddharth Yadav, Advocate.

versus

STATE (NCT OF DELHI)
 Through
 The SHO, P.S. Ashok Vihar

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC (Crl.) for
 the State with Mr. Arjit Sharma and
 Mr. Nikunj Bindal, Advocates with
 Inspector Rajeev Kumar (ATO) and
 Inspector Kuldeep Shekhawat, SHO,
 PS Ashok Vihar.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Writ Petition under Article 226 of the Constitution of India read with Section 558 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the Petitioner-Vikas Sidhu for quashing the Order dated 02.01.2025 and for directing the Respondent for transfer of the Petitioner, to Semi Open Prison in FIR No. 34/2003 under Section 302/364-A/201/34 Indian Penal Code, Police Station Ashok Vihar.



2. The Petitioner has sought quashing of the Order dated 02.01.2025 vide which the Respondent has again declined the transfer of the Petitioner to Semi-Open Jail and for the compliance of Order dated 04.09.2024 in W.P. (Crl.) No. 2732/2023 vide which his request for transfer to Semi-Open Prison was allowed.
3. It is submitted that the Petitioner had faced a lengthy trial in FIR No. 34/2003 and was convicted *vide* Judgment dated 13.11.2017 and was Sentenced to imprisonment on 23.12.2017 for natural life by learned ASJ, Delhi. The Appeal against conviction was dismissed by this Court *vide* Judgment dated 31.10.2018. The Criminal Appeal No. 2277/2022 filed before the Apex Court, has been partly allowed and his Sentence has been modified to minimum 20 years of imprisonment. It is submitted that the Petitioner has suffered 19½ years of actual incarceration.
4. The Petitioner had earlier filed W.P. (Crl.) No. 2732/2023 seeking directions for transfer of the Petitioner, in a Semi-Open Prison. *The Petition was allowed vide Order dated 04.09.2024* and the Petitioner was directed to be transferred to Semi-Open Prison. *However, despite the directions of the Court, the Respondent has failed to abide by the Orders.* Though, several number of convicts have been sent to Semi Open Prison, who have been involved in similar heinous crime but the Order has not been complied with in the case of the Petitioner.
5. It is further submitted that the Petitioner is covered under the Policy as defined in Standing Order No. 61 of the Respondent. The conduct of the Petitioner in Jail, has been satisfactory. He has won numerous good conduct and appreciation Certificates. He has been granted Furlough on several



occasions and has surrendered in time. Nothing adverse has been recorded against him during his stay outside. He has shown good conduct and the Reformatory Policy under the Indian legal system, must be considered. Hence, the prayer is made that the Order dated 02.01.2025 *vide* which the Respondent has denied to comply with the directions of this Court *vide* Order dated 04.09.2024, be set-aside and the Petitioner be permitted to be transferred to Semi Open Jail.

6. ***Learned Additional Standing Counsel*** has submitted the copy of the Minutes of the Meeting dated 24.12.2024 whereby the Jail Authorities had considered the request of the Petitioner, to be shifted to Semi Open Jail. *Let the same be taken on record.*

7. It was stated in the Minutes of the Meeting dated 24.12.2024 that as per the Provision No. 3, Clause (ii) of Standing Order No.61, prisoners convicted for offences such as Dacoity, Terrorism, Kidnapping, Smuggling etc. are not normally sent to the confinement in the Semi Open Jail. However, DG(P) on recommendation of the Selection Committee, can consider the case of the prisoner in Clause (ii) for the purpose. It was noted that since the involvement of the Petitioner was in a heinous crime like kidnapping for ransom, murder, forgery and cheating. It was recommended that he should not be transferred to Semi Open Jail.

8. The clauses read as under:

“ 3. Criteria for Selection:

...

(ii) The following prisoners shall not normally be sent for confinement in a semi-open prison who:-

(a) are considered dangerous or are involved in serious



prison violence like assault outbreak, riot, mutiny or escape, or who have been found instigating serious violation of prison discipline;

(b) have convicted for offences such as dacoity, terrorist crimes, kidnapping, smuggling, under NDPS Act, foreigners or members of organized criminal gangs;

(c) are suffering from physical or mental illness;

(d) are habitual/repeater prisoners;

(e) having any case pending in a court;

(f) are suffering from mental disease or any other serious disease or prisoners having previous history of serious mental illness;

(g) have been transferred from semi open prison to a closed prison on account of non compliance of jail instructions

(h) Women prisoners; and

(i) Any other prisoner or category of prisoners whom the Director General of Prisons considers unfit for being sent to an open prison.

(iii) Notwithstanding anything contained in clause (ii) above, the Director General of Prisons, may on the recommendation of the Selection Committee, consider the cases of prisoners falling under clause (ii) for the purpose of confinement in semi-open prison.”

9. Submissions heard and the record perused.

10. Pertinently, a similar W.P. (Crl.) No. 2732/2023 had been filed by the Petitioner wherein the similar prayer was made, in terms of the Standing Order of the Respondent. Similar objections had been taken on behalf of the State that the request of the Petitioner for being transferred to Semi Open Jail, was rejected as the Policy of 2019, was not applicable. The objection was duly considered and the Writ Petition was allowed *vide* Order dated 04.09.2024 considering the Good conduct of the Petitioner and that only



nine months of Sentence remained to be undergone. Therefore, directions were issued to transfer him to Semi Open Jail, in accordance with the Rules.

11. However, the ingenuity and the tenacity of the Respondent came to the fore when despite there being directions of this Court, a Meeting was held on 24.12.2024 whereby a reference was made to the earlier Standing Order dated 11.06.2013 and on the same grounds of the offence being heinous, the Committee recommended against the shifting of the Petitioner to Semi Open Jail.

12. The Minutes of the Meeting dated 24.12.2024 clearly reflect the defiance on the part of the Committee, who has not taken into consideration any of the factors of long incarceration, good conduct and nine months' sentence remaining to be undergone; the request of the Petitioner has been rejected in a mechanical manner. The Minutes reflect a complete non-application of mind and is bereft of any cogent reasons for denying the shifting of the Petitioner to Semi Open Jail. It is written in the Minutes itself that as per Provision No. 3, Clause (iii) itself provides that DG(P) on the recommendation of the Selection Committee, may shift the person falling in Category 2 for confinement to Semi Open Prisons.

13. The good conduct, long incarceration and barely nine months' sentence remaining to be undergone, should have been the considerations for the Selection Committee for shifting the Petitioner to Semi Open Jail. This is more so when *vide* earlier Order dated 04.09.2024, this Court had directed shifting of the Petitioner, to Semi Open Jail. Such Orders with this kind of disregard to the Orders of the Court with impunity by the Jail Authority and that too by the Senior most Officers, is not appreciated and is deprecated in



the strongest words.

14. For the reasons stated above, the impugned Order dated 02.01.2024 is quashed and it is hereby directed that the Petitioner be transferred to Semi Open Jail for undergoing his remaining Sentence.

15. The Petition is accordingly allowed and disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 21, 2025/RS