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

Date of decision: 29.10.2026

\# **CNR No. DLHC010487182026**

\+ W.P.(CRL) 3186/2026

JAGDISH .....Petitioner

Through: Mr.Chetan Bhardwaj & Ms.Priyal Bhardwaj, Advs.

versus

STATE GNCT OF DELHI & ANR. .....Respondents

Through: Mr.Sanjay Lao, Sr. Adv. & Mr.Aman Usman, APP with Mr.Abhinav Kumar & Mr.Aryan Sachdeva, Advs. along with Insp. Manmeet Singh, PS Karol Bagh, Asst. Supdt. Sandeep Mallik, Jail No.14, Mandoli Jail.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

NAVIN CHAWLA, J. (ORAL)

1. The present Writ Petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for a Writ in the nature of Habeas Corpus, directing the respondents to release the petitioner in light of completion of sentence in the case in FIR No. 623/2014 under Sections 326A/326B of the Indian Penal Code, 1860 (in short 'IPC') registered at P.S. Karol Bagh, Delhi.

2. The petition is premised on the submission that the petitioner,

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having been convicted of offences under Sections 326A/326B of the IPC, was sentenced by an order dated 17.09.2016 passed by the Court of the learned Special Judge-2, NDPS, Central District, Tis Hazari Courts, Delhi, to undergo rigorous imprisonment for a period of 10 years and a fine of Rs. 10,000/- and, in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 326A of the IPC, and rigorous imprisonment for 5 years and a fine of Rs. 10,000/- and, in default of payment of fine, simple imprisonment for one month, under Section 326B of the IPC. It was directed that both sentences shall run concurrently.

3. The petitioner filed a Criminal Appeal, being Crl. A. No. 283/2017, which was dismissed *vide* a judgment dated 12.11.2020 of this Court.

4. As per the nominal roll, the petitioner has already undergone custody of 7 years, 7 months and 3 days as on 27.10.2026, earning a remission of 1 year, 6 months and 13 days.

5. It is submitted that, in terms of notification bearing No. F.No.18/191/2015/HG/1428-1438 dated 27.03.2020, the petitioner, on being released on emergency parole during COVID-19 pandamic, is entitled to seek exclusion of the period from 15.06.2021 to 07.12.2024 (his date of re-arrest), that is, 3 years 5 months and 20 days, towards his custody period.

6. On the other hand, Mr. Lao, learned senior counsel appearing for the respondent, submits that the petitioner was granted emergency parole for a period of eight weeks with effect from 15.06.2021, whereafter the same was extended from time to time till 07.04.2023.

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The petitioner failed to surrender on expiry of the period of such extension, and was re-arrested only on 07.12.2024. He was issued a punishment ticket bearing No. 660 dated 07.12.2024 for having failed to surrender within time. The same was approved by the District and Sessions Judge, but has been set aside by the learned Single Judge of this Court, *vide* order dated 01.09.2026 passed in W.P. (CRL.) No. 3189/2025. He submits that, in terms of the circular bearing No. 4535 dated 29.10.2021 issued by the Competent Authority, PHQ, Tihar, the petitioner, having failed to surrender in time, is not entitled for counting of the period of emergency parole towards his custody period.

7. He submits that, even otherwise, the conduct of the petitioner in jail has been unsatisfactory and multiple punishments tickets have been issued against him.

8. We have considered the submissions made by the learned counsel for the parties.

9. In terms of Notification dated 27.03.2020, issued by the Home Department, Government of National Capital Territory of Delhi, the period of emergency parole (at that time, only eight weeks) was to be counted towards the sentence of the prisoner. We may quote the relevant paragraphs of the said Notification as under:-

> *"**3. Now, therefore**, the Government. of National Capital Territory of Delhi, keeping in mind the emergent situation of threat of COVID-19 epidemic in Delhi Prisons, and in exercise of powers conferred under Rule 1212 A (inserted in the main Rules vide gazette Notification No F.18/191/2015/HG/1379-1392 dated 23.03.2020) of the Delhi Prisons Rules*

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2018, has decided to grant upto eight weeks emergency parole, which shall be counted towards the sentence of the prisoners."

10. It is admitted that the emergency parole granted to the petitioner stood extended till 07.04.2023. Therefore, in terms of the above Notification, the period till 07.04.2023 was to be counted towards the period undergone by the petitioner.

11. The circular bearing No. 4535 dated 29.10.2021, however, provides as under:-

"The convicts who violates the terms and conditions of emergency parole and re-arrested by the police in another case or same case. In that case the period spent by the convict outside jail on emergency parole shall not be counted towards the sentence if there are sufficient evidence that the no surrender is intentional ad mala fide with an intention to evade the remaining period of sentence."

12. Mr. Lao, the learned senior counsel for the respondent, has submitted that, as the petitioner had failed to surrender on expiry of the period of emergency parole and came to be re-arrested only on 07.12.2024, he is not entitled for counting of the period spent by him outside the jail on emergency parole towards his sentence.

13. We are unable to accept the above submissions of Mr. Lao for the reason that in terms of the Circular dated 29.10.2021, it is only where the failure to surrender on the part of the convict "*is intentional and mala fide with an intention to evade the remaining period of sentence*" that the convict will not be able to have the period of emergency parole counted towards the period of his imprisonment. In

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the present case, for the failure of the petitioner to surrender within time, the respondent had issued a punishment ticket. The same came to be challenged by the petitioner before this Court in W.P. (CRL.) No. 3189/2025, titled ***Jagdish v. State of GNCT of Delhi***. A learned Single Judge of this Court, by an order dated 01.09.2026, set aside the punishment ticket, by observing as under:

> *"5. This Court has previously set aside punishment tickets awarded to convicts for a failure to surrender during the COVID-19 pandemic, having regard both to the genuine confusion that then prevailed regarding surrender dates and to the non-observance of the mandatory procedural safeguards prescribed by the Prison Rules. For reference, in Mukesh v. State (NCT of Delhi), this Court set aside the punishment ticket awarded to the convict for a 21-day late surrender following the expiration of his COVID-19 emergency parole, holding that the jail authorities failed to follow the mandatory procedural safeguards, such as issuing a written showcause notice and conducting an inquiry as prescribed under Rules 1272 and 1273 of the Prison Rules. Similarly, in Vikram Pal v. State (NCT of Delhi)3, this Court set aside punishment tickets on the ground that the punishment had not been placed for judicial appraisal within the time stipulated by Rules 1272 and 1273 of the Prison Rules, and that the explanation tendered for the delay in surrender was plausible.*
>
> *6. Considering the aforesaid, in the present case the failure of the petitioner to surrender is attributable to the confusion that prevailed regarding surrender dates during the COVID-19 pandemic, and there is nothing on record to suggest that the overstay was deliberate, or that any offence was committed by the petitioner during that period. On a*

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parity with the view previously taken by this Court, and having regard also to the belated judicial appraisal of the impugned punishment ticket, the Court is of the view that the impugned punishment ticket cannot be sustained.

7. In view of the aforesaid, Punishment Ticket No. 660 dated 07.12.2024 is set aside."

(Emphasis supplied)

14. The learned Single Judge has, therefore, found that the failure of the petitioner to surrender on expiry of the period of emergency parole, was due to confusion that prevailed regarding the date of surrender during the COVID-19 pandemic and there was nothing on record to suggest that his overstay was deliberate.

15. In view of the above finding, the bar contained in the circular dated 29.10.2021 cannot operate against the petitioner.

16. At the same time, the petitioner can avail of the period only between 15.06.2021 and 07.04.2023, that is, the period of emergency parole granted to him, for being counted towards his sentence.

17. We, therefore, dispose of this petition by directing the Jail Superintendent to immediately rework the period of sentence already undergone by the petitioner, along with the remission earned by him, taking into account his period of emergency parole between 15.06.2021 and 07.04.2023 and treating it as the period undergone. This exercise must be completed within two days from the receipt of a copy of this order.

18. On above exercise, in case the petitioner is found to have already completed his sentence, he shall be forthwith released,

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otherwise, he shall be informed of the manner in which the period of his sentence has been calculated and the remaining period of sentence that he has to undergo. If the finding of the Jail Superintendent is that the petitioner has to undergo further sentence, it shall be open to the petitioner, if so advised, to challenge the said finding in accordance with law.

19. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

OCTOBER 29, 2026/*rv/hn*

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