

\$~ 6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29.03.2022

+

W.P.(CRL) 242/2022

PRAVEEN RANA

..... Petitioner

Through: Mr. Akshay Bhandari & Mr. Vinayak
Chitale, Advocates.

versus

STATE (GOVTOF NCT OF DELHI

..... Respondents

Through: Mr. Karan Dhalla & Ms. Mizba
Dhebar, Advocates for Mr. Avi Singh,
ASC for the State with SI Prateek
Saxena, PS Samaipur Badli.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. By way of this writ petition under Article 226 of the Constitution, the petitioner assails a punishment order, dated 08.09.2021, issued by the Jail Superintendent, Central Jail-14, Mandoli, Delhi, whereby the punishment of stoppage of *mulaqaat* for the period of one month was imposed upon the petitioner.
2. Notice was issued in this petition on 03.02.2022, and the

respondent – State was directed to file a Status Report. The Status Report has not been filed in terms of the said order. However, it is handed over in Court today by Mr. Karan Dhalla, the learned counsel appearing on behalf of Mr. Avi Singh, learned Additional Standing Counsel for the State, and a copy has also been handed over to Mr. Akshay Bhandari, the learned counsel for the petitioner. The petition is taken up for hearing with the consent of learned counsel for the parties on both sides.

3. Alongwith the Status Report, a copy of the Judicial Appraisal order, dated 18.12.2021, under Section 46 of the Delhi Prisons Act, 2000 [“DP Act”] read with Rule 47 of the Delhi Prison Rules, 1988, has also been placed on record, wherein the punishment imposed upon the petitioner was reduced to stoppage of *mulaqaat* for 15 days. Mr. Bhandari states that the Judicial Appraisal order was not brought to the knowledge of the petitioner, which is why it does not find mention in the writ petition.

4. Although the period of punishment has already been undergone by the petitioner, Mr. Bhandari submits that the punishment was imposed contrary to the procedure contemplated in the Delhi Prison Rules, 2018 [“the Rules”] and seeks remand to the jail authorities for reconsideration of the matter.

5. By an order dated 06.06.2018, the petitioner was convicted of the offence under Section 302 of the Indian Penal Code, 1860, arising out of FIR No. 188/2017 registered at Police Station Samaipur Badli.

6. The petitioner’s appeal against the aforesaid order [CRL.A. 1089/2018] is pending before this Court. In the said appeal, the

petitioner made an application for interim bail [CRL.M.(Bail) 7624/2020] on the ground that he had to undergo surgery for varicose veins. By an order dated 17.11.2020, the Division Bench granted interim bail to the petitioner for a period of four weeks. He was released on 28.11.2020 and was required to surrender on 25.12.2020. However, the Status Report records that the petitioner did not surrender on time and was re-arrested on 03.09.2021, following which he was produced before the Duty Magistrate.

7. In these circumstances, a Convict History Ticket [“the Ticket”], dated 04.09.2021, was submitted by the Assistant Jail Superintendent, Central Jail-14, Mandoli which reads as follows:-

“On 04.09.2021, It has been reported that convict PRAVEEN RANA @ DILLU S/o SATBIR RANA was granted Interim Bail for a period of 4 weeks granted by the Hon'ble DHC vide order dated: 17.11.2020. The convict was released on 28.11.2020. The date of surrender was fixed for 25.12.2020. But he didn't surrender on time. On 03.09.2021 the said convict was rearrested in same case by Delhi Police and produced before Hon'ble court Ms. Upasan Satija, Duty MM(Mahlla)-02, North District, Rohini Courts Delhi.

Hence, in view of above, the convict PRAVEEN RANA @ DILLU S/O SATBIR RANA has violated terms & condition mentioned in the Interim Bail and the jail rules and he may be punished as per provisions of Delhi Jail Manual, 2018”

8. The punishment order, dated 08.09.2021, was thereafter passed by the Jail Superintendent. The order reads as follows:-

“Heard. He has no reasonable excuse for not surrendering. He has been re arrested in the same case. For the late surrender one months mulakat stop subject to approval by the Hon'ble Court.

9. The contention of Mr. Bhandari is that the aforesaid order was passed without complying with the provisions of the Rules, with respect to award of punishment. Under Rule 1271 of the Rules, punishments have been classified into minor punishments and major punishments. A major punishment under Rule 1271(b)(II), includes stoppage of interviews for a period of upto three months.

10. The procedure for awarding of punishments is provided in Rules 1272 and 1273 in the following terms:-

“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 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.”

11. Mr. Bhandari submits that, even in the Status Report, no show cause notice has been produced to demonstrate compliance with Rule 1272. It is his further submission that petitioner was, in fact, not heard by the Jail Superintendent. In any event, Mr. Bhandari points out that the order of the Jail Superintendent does not record any contentions on the part of the petitioner. Mr. Bhandari relies upon the orders of this Court dated 01.04.2019 in W.P.(Crl) 633/2019 [*Dalip Singh vs. State (Govt of NCT of Delhi)*], and 18.02.2022 in W.P.(Crl) 1849/2021 [*Kundan Singh vs. State (Govt of NCT of Delhi)*] in respect of his contentions.

12. Mr. Dhalla, on the other hand, submits that a copy of the Ticket was handed over to the petitioner, and the petitioner was thus informed of the charges against him and the punishment contemplated. Mr. Dhalla states, upon instructions, that the petitioner was, in fact, heard by the Jail Superintendent, and that the order dated 08.09.2021 was passed in view of the fact that the petitioner did not offer any

defence to the allegation that he had surrendered late.

13. It is clear from a reading of Rule 1272 of the Rules that it requires a notice in writing to be given to a prisoner with reference to the violation of the rules alleged against him. In the present case, even according to the Status Report filed, only a copy of the Ticket was served upon the petitioner. The Ticket mentions the allegation of late surrender, but does not indicate that the petitioner was given an opportunity to show cause, or indicate any date upon which he was to be heard by the Jail Superintendent. It is, in fact, addressed by the Assistant Jail Superintendent to the Jail Superintendent [through the Deputy Jail Superintendent] and there is no indication on the face of the document as the purpose for which a copy was given to the petitioner. This is inadequate for compliance with Rule 1272. The judgment of this Court in *Kundan Singh* (supra) is authority for the proposition that a major punishment imposed without compliance with the requirement of giving a show cause notice is liable to be set aside in writ proceedings.

14. As far as the question of hearing is concerned, the order of the Superintendent does not record the contentions put forth by the petitioner. As I have come to the conclusion recorded above that the show cause notice dated 04.09.2021 was itself inadequate, it is not necessary to enter into this controversy further. Suffice it to say that, the order under challenge in *Dalip Singh* (supra), like in the present case, also stopping *mulaqaat* for 15 days, stated “Heard”, but did not elaborate on the defence of the petitioner. The Jail Superintendent was consequently directed to give *post facto* hearing to the petitioner in

that case.

15. Having regard to the aforesaid, the impugned order of the Jail Superintendent dated 08.09.2021, as modified by the Judicial Appraisal order dated 18.12.2021, is set aside. As the petitioner is now fully aware of the charge against him, the issuance of a show cause notice at this stage is dispensed with. However, the respondent authorities will issue a notice to the petitioner for a *post facto* hearing before the Jail Superintendent. It is made clear that the Jail Superintendent will decide the question of whether the petitioner is liable to imposition of a punishment and, if so, the quantum of punishment in accordance with the provisions of the Act and the Rules, without reference to the impugned order dated 08.09.2021, as modified by the Judicial Appraisal order dated 18.12.2021.

16. The petition is disposed of with these directions with no order as to costs.

PRATEEK JALAN, J

MARCH 29, 2022

'pv'