

(2025) 01 RAJ CK 1640

In the Rajasthan High Court, Jodhpur Bench

Case No : Criminal Writ Petition No. 358 Of 2024

Bhajan Meena @ Bahadur S/O Shri Harphool Meena

APPELLANT

Vs

The State Of Rajasthan

RESPONDENT

Date of Decision : 07-01-2025

Acts Referred:

Rajasthan Civil Services (CCA) Rules, 1958 — Rule 54

Citation : (2025) 01 RAJ CK 1640

Hon'ble Judges : Arun Monga, J

Bench : Single Bench

Advocate : Harish Purohit, Shashank Sharma, Neelam Sharma

Final Decision : Disposed of

Judgement

Anoop Kumar Dhand, J

1. "Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him, restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the criminal behaviour of many innocent convicts. Law must rise with life and jurisprudence responds to humanism."

-Justice V.R. Krishna Iyer

2. Prisons, as penal and correctional institutions, have existed in India and abroad since times immemorial. Prisons confine criminals, convicts and undertrials. The primary purpose of prisons is to isolate or alienate such people from the society. They are jailed for a certain period but the purpose of reformation and rehabilitation is sometimes defeated due to the prison environment and the treatment meted out to prisoners.

3. The administration and management of the modern prison system in India is governed by the Prisons Act of 1894, which has its origins in the

recommendations of the "Prison Discipline Committee" appointed in 1836 by Lord Macaulay, followed by constitution of four jail commissions to review the system from time to time. The law smacks of colonial prejudices and focuses on rigorous custodial treatment of prisoners while ignoring reformatory measures such as education, skill development, etc.

4. After independence, there has always been the larger question of how far our current penitentiary structure is furthering the objectives of the prison administration of reformation and rehabilitation of the offenders into the society as responsible citizens. With the noble idea of ensuring human rights and dignity of prisoners and their reformation and rehabilitation, the All India Jail Manual Committee recommended, inter-alia, setting up of open prison institutions. The need for having open penal and correctional institutions was recognised and extensively discussed in the first United Nation Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955.

5. In India, the beginning of the Open Prison System was made in 1952 under the inspiration of Dr. Sampurnanand when an Open Air Camp was opened at Chakia in the Varanasi District of Uttar Pradesh. The inmates were allowed to work on their own or in local factories and wages were paid to them.

6. In case of Dharmbir vs State of Uttar Pradesh, reported in (1979) 3 SCC 645, the Hon'ble Apex Court has supported the institution of open prisons since such prisons, the Court felt, had certain advantages in the context of young offenders who could be protected from some of the well known vices to which young inmates were subjected to in ordinary jails. The Court therefore directed the State Government to despatch these two prisoners, in their early twenties, to one of the open prisons in Uttar Pradesh without standing on technical rules, if substantially they fulfil the required conditions.

7. The instant criminal writ petition has been submitted against the impugned order dated 24.01.2024 passed by the respondent by which the prayer of the petitioner for transferring him from Central Jail to Open Air Camp has been rejected on the count that while serving his sentence, the petitioner has committed the murder of a Pakistani National for which he has been awarded life sentence vide judgment dated 10.01.2020.

8. Learned counsel for the petitioner submits that the petitioner was granted regular parole of twenty days, after the subsequent conviction, by the Division Bench of this Court vide order dated 24.05.2023. Counsel submits that an identical issue came before the Division Bench of this Court at Principal Seat wherein it was examined "whether an accused undergoing life sentence can be shifted to Open Air Camp from Jail after his subsequent conviction for the same offence i.e. Section 302 IPC". Counsel submits that in the case of Narendra Singh Vs. State of Rajasthan and Ors. (D.B. Criminal Writ Petition No. 506/2020 decided on 22.01.2021), the allegation against the said petitioner was that while undergoing life sentence, he committed the murder of the Jailor in jail and the

respondent initially declined to shift him from the Jail to Open Air Camp, but looking to the interpretation of the provision contained under Section 3 of the Prisoners Act, 1894 (for short, 'the Act of 1894') and Rule 2 of the Rajasthan Open Air Camp Rules, 1972 (for short, 'the Rules of 1972') an order was passed directing the State to shift the said convict in Open Air Camp. Hence, under these circumstances, the petitioner also deserves the same indulgence.

9. Per contra, Mr. Rajesh Choudhary-GA Cum AAG opposed the arguments raised by counsel for the petitioner and submitted that the petitioner has been convicted twice in two different cases for the offence punishable under Section 302 IPC, and he been awarded life sentence in both the cases. Counsel submits that while serving the life sentence in prison, the petitioner has committed the same offence again by committing murder of a Pakistani National, hence, under these circumstances, the prayer made by the petitioner for shifting him from Central Jail to Open Air Camp has been rightly declined by the State by passing a reasoned and cogent order, which requires no interference of this Court.

10. Heard and considered the submissions made at Bar and perused the material available on record.

11. This fact is not in dispute that the petitioner was undergoing sentence of life imprisonment and while undergoing the said sentence, he committed murder of a Pakistani National for which he was found guilty and was again sentenced to serve life imprisonment.

12. Now, the question which remains for consideration before this Court is that "whether committing the murder of a Pakistani National can be a reason for declining the prayer of the convict petitioner for shifting him from Central Jail to Open Air Camp?"

13. It is noticed that as per Clause (vi) of Rule 2 of the Rules of 1972, 'Open Air Camp' is the place which is declared to be an Open Jail for detention of the prisoner, in pursuant to the clause (1) of Section 3 of the Act of 1894, as adopted by the State of Rajasthan.

14. Clause (1) of Section 3 of the Act of 1894 defines the word 'prison' as under:-

"prison" means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include-

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882(10 of 1882); or

(c) any place which has been declared by the State Government by general or special order, to be a subsidiary jail;

15. A conjoint reading of Section 3(1) of the Act of 1894 and Rule 2(vi) of the Rules of 1972 makes it abundantly clear that the Open Air Camp also falls within the definition of the 'prison' and even after transfer of a prisoner to Open Air Camp, his detention continues and thus, the reasoning adopted by the Committee that since the petitioner has been sentenced to suffer imprisonment for remaining period of natural life, he cannot be transferred to Open Air Camp, does not appear to be justified.

16. It is pertinent to note that the concept of Open Air Camp is evolved with a view to encourage good conduct, satisfactory performance of work and a life of self discipline among the convicts and to provide them with a pre-release opportunity to learn social adjustment and economic self dependence. The transfer of the prisoners to the Open Air Camp is regulated by the rules wherein the classes of the prisoners, who shall ordinarily be not eligible for being sent to Open Air Camp, have been specified under Rule 3A of the Rules of 1972. The prisoners convicted under Section 302 IPC are not amongst the class of the prisoners ineligible for admission to Open Air Camp. It is not even the case of the State that the case of the petitioner is covered by any of the inhibitions contained in Rule 3 of the Rules. The eligibility of the petitioner for transfer to Open Air Camp as provided for under Rule 4 of the Rules is also not in dispute. As per Rule 3(g) of the Rules of 1972, the prisoners whose conduct in the jail is not good are not eligible for being sent to Open Air Camp but, a prisoner who would have not received any jail punishment for two years preceding the date of recommendation of his name for admission to the Open Air Camp, may be considered eligible.

17. Following the proposition that every saint has a past and every sinner has a future, this Court is of the considered view that every prisoner has a right of reformation and rehabilitation to reform and adjust in society and lead a normal civil life after his release, as a responsible citizen.

18. This fact is not in dispute that during the period of incarceration pursuant to the sentence awarded in the criminal case in question, the petitioner was ever awarded jail punishment for his conduct rather, his conduct during the stay in jail is found to be satisfactory. Further, during the period of incarceration, the petitioner was released on parole vide order dated 24.05.2023 by the Division Bench of this Court while deciding the D.B. Criminal Writ Petition (Parole) No. 841/2023 and after availing the parole he returned to the jail peacefully.

19. The petitioner has satisfied this Court that in identical situation there have been instances where the convict prisoner was shifted from Central Jail to Open Air Camp, even when he was found repeating the offence again in jail, while serving the sentence, hence under these circumstances, his case is at par with the aforesaid convict prisoner Narendra Singh (Supra) for getting the same indulgence.

20. This Court finds that the allegations of committing murder of a Pakistani

National, while undergoing life sentence, cannot be the sole ground to deny prayer of the petitioner for his shifting from Central Jail to Open Air Camp.

21. In view of the discussions made herein-above, the impugned order dated 24.01.2024 qua the petitioner stands quashed and set aside. The respondents are directed to transfer the petitioner from Central Jail to Open Air Camp in accordance with the Rules.

22. No order as to cost.