
(2021) 01 RAJ CK 0246

In the Rajasthan High Court

Case No : Criminal Writ Petition No. 506 Of 2020

Narendra Singh @ Mukesh @ Bhura

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 22-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302
Prisons Act, 1894 — Section 3(1)

Citation : (2021) 01 RAJ CK 0246

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Kalu Ram Bhati, Abhishek Purohit, Farzand Ali

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner is seeking directions to the respondents to transfer him from Central Jail, Bikaner to Open Air Camp.

2. The petitioner was convicted for offences under Section 302, 201 IPC and was sentenced to suffer life imprisonment vide judgment dated

14.8.2007 passed by the Additional Sessions Judge (Fast Track) No.2, Jaipur in Sessions Case No.45/06. While undergoing the life sentence, the

petitioner was convicted vide judgment dated 21.12.13 passed by the District & Sessions Judge, Jodhpur in Sessions Case No.24/12 for committing

murder of the Jailor Shri Bharat Bhushan Bhatt and sentenced to suffer life imprisonment extending to whole of the remaining period of natural life.

The appeal preferred by the petitioner against the judgment dated 14.8.07 passed by the Additional Sessions Judge (Fast Track) No.2, Jaipur in

Sessions Case No.45/06 was allowed by this Court and the petitioner was acquitted of the charges. However, the appeal preferred by the petitioner

against the judgment dated 21.12.13 passed in Sessions Case No.24/12 has been dismissed by this Court vide judgment dated 4.10.19 in Appeal No.55/14.

3. The petitioner preferred an application seeking transfer to the Open Air Camp under the provisions of Rajasthan Open Air Camp Rules, 1972 (for short "the Rules"). The application stood rejected by Prisoners Open Air Camp Advisory Committee ('the Committee') vide its decision dated 15.4.19, observing that the petitioner has been convicted for murder of the jailor Shri Bharat Bhushan Bhatt and he has been sentenced to suffer imprisonment for remaining period of natural life. Aggrieved thereby, the writ petition preferred by the petitioner was disposed of by a Bench of this Court vide order dated 20.7.20 passed in D.B.Cri. Writ Petition No.462/19 with the directions in the following terms:

Having considered the submissions advanced at the Bar and after going through the impugned recommendations and the contents of the reply filed by the learned AAG and the Rules of 1972, we are duly satisfied that the reasoning offered by the respondents for denying opportunity to the petitioner to be sent to the Open Air Camp is absolutely unsustainable as the same is not in consonance with the Rules of 1972. Thus, the impugned minutes are set aside qua the petitioner. The competent authorities are directed to objectively reconsider the case of the petitioner for being sent to the Open Air Camp without being prejudiced by the earlier recommendations.

4. Pursuant to the directions issued by this Court as aforesaid, the case of the petitioner for transfer to Open Air Camp was reconsidered by the Committee in its meeting held on 27.10.20. The application of the petitioner for transfer to Open Air Camp has been again declined by the Committee for the reasons recorded in the following terms:

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5. Learned counsel appearing for the petitioner contended that apparently, the prayer of the petitioner for transfer to the Open Air Camp has been declined by the Committee adopting the same reasoning which was not found to be sustainable by this Court while remanding the matter for fresh

consideration vide order dated 20.7.20. Learned counsel submitted that earlier the respondent had released prisoner Kalyan Singh s/o Prithvi Singh, Jagpal Singh and Omniwas vide decision dated 10.12.14 and 10.1.15, notwithstanding that they were also sentenced to suffer the imprisonment for remaining period of natural life and thus, the action of the respondent in denying the similar treatment to the petitioner is ex facie arbitrary and discriminatory. Learned counsel submitted that the petitioner was earlier released on first, second and third parole for a period of 20, 30 & 40 days respectively as also on emergent parole for 15 days and he returned to the jail after availing the parole peacefully. That apart, the conduct of the petitioner during his incarceration was also found satisfactory and therefore, viewed from any angle, the rejection of the petitioner's application for transfer to Open Air Camp is absolutely unjustified.

6. On the other hand, learned AAG submitted that while considering the application of the prisoner seeking transfer to Open Air Camp, the fact that he was sentenced to suffer imprisonment for remaining natural life cannot be ignored. Learned AAG submitted that the petitioner was convicted for murder of jailor while he was undergoing life imprisonment in other case, also indicates that he is habitual criminal and thus, the decision of the Committee in rejecting the application seeking transfer to Open Air Camp, cannot be faulted with. Learned AAG submitted that if the petitioner is transferred to Open Air Camp, it will demoralize the jail authorities and encourage the prisoners committing such heinous crime and thus, the decision of the Committee does not warrant interference by this Court.

7. We have considered the rival submissions and perused the material on record.

8. It is true that the petitioner was convicted for committing murder of the jailor while undergoing sentence of life imprisonment and he was sentenced to suffer imprisonment for remaining period of natural life. But then, a bare perusal of the order dated 20.7.20 passed by a coordinate Bench in the writ petition earlier preferred by the petitioner assailing the decision of the Committee, reveals that the reasons assigned by the Committee, while declining the application seeking transfer to Open Air Camp, were found not sustainable in the eyes of law and thus, harping on the same string, ignoring the observations made by this Court as aforesaid, the Committee was not justified in rejecting the application.

9. It is noticed that as per clause (vi) of Rule 2 of the Rules, 'Open Air Camp' is the place which is declared to be an Open Air Camp for the detention

of the prisoner in pursuant of clause (1) of Section 3 of Prisons Act, 1894 ('the Act of 1894') as adopted to the State of Rajasthan.

10. Clause (1) of Section 3 of the Act of 1894 defines '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;

11. A conjoint reading of clause (1) of Section 3 of the Act of 1894 and Rule 2 (vi) of the Rules 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.

12. 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 3 of the Rules. 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), 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. It is also not the case of the respondents 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 reported to be satisfactory. Further, during the period of incarceration, the petitioner was released on regular parole thrice and emergent

parole once and after availing the parole he returned to the jail peacefully.

13. The petitioner has specifically averred in the petition that similarly situated persons named above, who were also sentenced to suffer imprisonment

for remaining period of natural life, were transferred to Open Air Camp pursuant to the recommendations made by the Committee, the fact which is

not denied by the respondents in their counter to the petition filed before this Court and thus, the action of the respondents in denying the similar

treatment to the petitioner is arbitrary and discriminatory.

14. In view of the discussion above, we do not find any reason as to why the petitioner who fulfills the eligibility criteria for transfer to Open Air Camp

and who has behaved well so far during the period of incarceration, should be declined an opportunity to stay in Open Air Camp.

15. In the result, the petition is allowed. The decision of the Prisoners Open Air Camp Advisory Committee dated 27.10.20, rejecting the application of

the petitioner for transfer to Open Air Camp, is quashed and set aside. The application of the petitioner for transfer to Open Air Camp shall stand

allowed. The respondents are directed to transfer the petitioner to Open Air Camp in accordance with the Rules. No order as to costs.