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

+ **W.P.(CRL) 2747/2025**

SURENDER KUMAR

.....Petitioner

Through: **Mr. Sarthak Maggon, Advocate**

versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Mr. Rahul Tyagi, ASC (Crl.) for the State with Mr. Sangeet Sibou, Mr. Priyansh Raj Singh Senger and Mr. Aniket Kumar, Advocates along with Insp. Sahi Ram, P.S.-Vasant Vihar**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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28.10.2025

CRL.M.A. 28810/2025 (seeking condonation of delay in filing the present petition)

1. For the reasons stated in the application, the delay in filing the captioned writ petition is condoned.

2. Accordingly, the application is disposed of.

W.P.(CRL) 2747/2025 & CRL.M.A. 25887/2025 (directions)

3. The Petitioner, is a life convict in case FIR No. 20/2005, registered under Sections 498A/302 of the Indian Penal Code, 1860 at P.S. Vasant Vihar. He assails punishment awarded under ticket dated 29th January, 2020, and the consequential order directing his transfer from the open prison to a closed prison.



4. During a surprise inspection of the open prison, the authorities recovered from Flat No. A-5, where the Petitioner was lodged, one Samsung mobile phone with battery, one Mobistar mobile phone with in-built battery, two SIM cards, and two chargers. These articles are prohibited within the jail premises and constitute a breach of the prison rules. Following a hearing, the Petitioner's Inmate Calling System (ICS) and canteen privileges were withdrawn for one month. The punishment was placed before the Inspecting Judge and, by order dated 18th August, 2020, was judicially appraised. A transfer from the open prison to a closed prison thereafter followed.

5. The latest nominal roll, records that as on 11th October, 2025, the Petitioner has undergone 19 years, 2 months and 16 days of actual custody and has earned remission of 3 years, 10 months and 9 days. His conduct column is marked "unsatisfactory" only on account of the solitary punishment ticket dated 29th January, 2020, which is the subject of this challenge. The nominal roll also notes that he has been granted parole and furlough on more than twenty occasions and has returned without adverse report.

6. On this canvas, the Petitioner asserts that his jail conduct has been, in substance, satisfactory, evidenced by his long placement in the open prison, which permitted daily release between 8:00 a.m. and 8:00 p.m. He contends that the impugned punishment ticket, and the transfer to a closed jail, have resulted in a disproportionate curtailment of a valuable rehabilitative privilege.

7. Indeed, placement in an open prison is a privilege earned through sustained good conduct over a substantial span of custody. It is not conferred



lightly and, once granted, cannot be withdrawn on a perfunctory footing. Where the entire edifice for withdrawal rests on a solitary punishment ticket, closer judicial scrutiny is warranted to ensure that both the fact of violation and the procedure for imposing a major penalty were sound, fair, and proportionate.

8. The State's status report asserts that, upon recovery of the prohibited articles, the process under Sections 50(2) and 53 of the Delhi Prison Act, 2000¹ was followed. It is stated that the Petitioner was apprised of the allegation, heard in response, and found unable to offer a plausible explanation, leading to withdrawal of Inmate Calling System and canteen facilities for one month and to his transfer from open to closed prison in terms of the Delhi Prison Rules, 2018² and allied guidelines. It is contended that the recovery, by itself, disentitled the Petitioner to continue in the open prison.

9. On the previous date, this Court recorded that the punishment imposed upon the Petitioner, being stoppage of Inmate Calling System (ICS) and canteen facilities for a period of one month for possession of prohibited items i.e. mobile phones, operates as a major punishment within the meaning of Rule 1271(b)(II) read with Rule 1271(b)(VII) of DPR and, therefore, attracts the procedural safeguards mandated by Rule 1272. Since it *prima facie* appeared that these safeguards had not been observed, a further report was called for.

10. The supplementary report now discloses that the search report dated 29th January, 2020, is untraceable. The Jail Superintendent has sought

¹ "DPA"

² "DPR"



retrieval from the Commandant (TSP), but the record remains unavailable. The State also accepts that no written notice in terms of Rule 1272 was issued to the Petitioner. It is nonetheless urged that the Petitioner was aware of the allegation and that the transfer is justified under Sections 50(2) and 53 of the Act.

11. The contention cannot prevail. Rule 1272 of the DPR obliges the authority, before imposing a major punishment, to issue a written notice calling upon the prisoner to show cause. Rule 1273 then requires a structured inquiry: identification and recording of relevant witness statements, opportunity to cross-question where appropriate, and recording of any confession in the presence of two witnesses. These requirements are not formalities but essential elements of fair procedure in any quasi-judicial process that restricts a substantial rehabilitative liberty. Where the foundational search report is missing and the mandatory notice and inquiry are concededly absent, the decision is vitiated for breach of the Rules and of principles of natural justice. A subsequent “judicial appraisal” by an Inspecting Judge cannot cure a void created by non-compliance at the stage where facts are found and rights are affected.

12. It must be noted that the limited punishment of withdrawal of canteen and ICS facilities for a brief period is not, by itself, the primary grievance of the Petitioner. What truly concerns him is the transfer from the open jail to a closed jail, which effectively curtails the limited liberty he had earned through years of good conduct. Such a consequence trenches upon personal freedom, and although triggered by a punishment ticket, it calls for closer scrutiny on legality, process, and proportionality.

13. Rule 1270 of the Delhi Prison Rules, 2018 is explicit. No punishment,



denial of privileges or amenities, or transfer to another prison with penal consequences may be imposed without judicial appraisal. The punishment ticket does not propose, much less reason, a transfer. The order of judicial appraisal dated 18th August, 2020, also does not examine whether reclassification was warranted, whether lesser measures would suffice, or how the transfer comports with proportionality. In the absence of a specific, reasoned judicial appraisal on the transfer itself, the move from open to closed prison cannot be sustained. That is an added ground to interfere.

14. A further, practical point bears mention. For inmates in open prisons, a mobile telephone often functions as the basic conduit for contact with family, work coordination, transport, and digital payments during authorised hours outside. If possession within the open-prison precincts is prohibited, there ought to be a clear, workable system for secure deposit and retrieval so that compliance is feasible. Without such an arrangement, the rules risk placing inmates in a pincer, liable to violation either for keeping a device or for being unable to function outside.

15. Mr. Sarthak Maggon, counsel for the Petitioner, states that no such deposit facility presently exists. Mr. Tyagi Counsel, ASC for the State, indicates there is a mechanism for special permission to possess otherwise prohibited items, including a mobile phone, within the jail premises, but there is no clarity on any structured deposit-and-return system for open-prison inmates. That lack of clarity itself calls for administrative attention.

16. The Court, therefore, directs the Director General (Prisons), after consulting relevant stakeholders, to frame and notify an SOP that either permits retention of mobile phones by open-prison inmates under regulated conditions, or establishes a secure deposit and return facility for hours when



inmates are required to remain inside the open-prison precincts. It shall be finalised and made operational within eight weeks.

17. As to re-admission to the open prison, Mr. Tyagi states that the decision lies with the Selection Committee. The nominal roll discloses no adverse material beyond the impugned ticket. The Committee shall reconsider the Petitioner's placement in the light of the findings above, apply the tests of legality and proportionality, and pass an order within one week. The order shall be communicated to the Petitioner forthwith.

18. In view of the foregoing, the punishment ticket dated 29th January, 2020 is set aside. All consequential directions flowing from that ticket, including the transfer from open to closed prison, are quashed. The Petitioner shall be restored to the position he held immediately prior to the impugned action, subject to any fresh, reasoned decision of the Selection Committee taken in accordance with law and these directions.

SANJEEV NARULA, J

OCTOBER 28, 2025/dy