



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Writ Petition No. 2249/2024

Mahaveer S/o Shri Birbal Ram, Aged About 52 Years, At Present Lodged In Central Jail, Bikaner Through His Wife Panku Devi W/o Shri Mahaveer, Aged About 46 Years, R/o Naharsar, P.s. Sadarsahar, District Churu.

-----Petitioner

Versus

1. State Of Rajasthan, Home Department, Jaipur.
2. The Director General (Jail), Jaipur.
3. The District Collector, Churu
4. The Superintendent, Central Jail Bikaner.

-----Respondents

For Petitioner(s) : Mr. Kaluram Bhati
For Respondent(s) : Mr. Deepak Choudhary, AAG
Mr. Surendra Bishnoi, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

02/02/2026

1. The present criminal writ petition has been preferred on behalf of the convict-petitioner assailing the adverse recommendations dated 14.02.2024 drawn by the State Level Prison Open Air Camp Advisory Committee, Jaipur, whereby the petitioner's application for being sent to Open Air Camp was rejected.
2. The record reveals that the petitioner stands convicted for the offence under Section 376 IPC and was sentenced to undergo ten years' rigorous imprisonment vide judgment dated 29.09.1995 passed by the learned Additional District and Sessions Judge,



Churu in Sessions Case No. 89/1993. The appeal preferred by the petitioner against the said conviction came to be dismissed and the judgment of conviction attained finality.

3. As per the custody certificate placed on record and not disputed by the respondents, the petitioner has undergone more than one-third of the substantive sentence including remission and his jail conduct has been reported to be satisfactory. It is also not in dispute that the petitioner was earlier released on first parole pursuant to the order passed by this Court in S.B. Criminal Writ Petition No. 380/2024 and during the said parole period, his conduct remained satisfactory.

4. The petitioner applied for transfer to Open Air Camp under the Rajasthan Prisoners Open Air Camp Rules, 1972. The said application was, however, rejected by the State Level Prison Open Air Camp Advisory Committee primarily on the ground that the petitioner stands convicted for an offence under Section 376 IPC and thus falls within the category of ineligibility under Rule 3 of the Rules of 1972.

5. Learned counsel for the petitioner contended that the rejection is mechanical, suffers from non-application of mind and is contrary to the settled legal position that Rule 3 of the Rules of 1972 is not mandatory but directory in nature. It was submitted that the expression "ordinarily" occurring in Rule 3 clearly obligates the Committee to examine the individual facts and mitigating circumstances of each case. Reliance has been placed upon the decision of this Court in **Ajit Singh vs. State of**



Rajasthan & Ors. (*D.B. Criminal Writ Petition No. 52/2022 decided on 11.03.2022*), as also upon other judgments rendered by Coordinate Benches of this Court, wherein adverse recommendations denying transfer to Open Air Camp solely on the ground of conviction under Section 376 IPC were set aside and the competent authorities were directed to reconsider or grant the benefit of transfer in accordance with the Rajasthan Prisoners Open Air Camp Rules, 1972.

6. Per contra, learned counsel appearing for the State supported the impugned recommendations and submitted that the petitioner has been convicted for a serious offence and therefore the Committee has rightly rejected his application.

7. This Court has given its thoughtful consideration to the rival submissions and perused the material available on record.

8. Before adverting to the facts of the present case, it would be apposite to refer to the relevant statutory provisions. Rule 3 of the Rajasthan Prisoners Open Air Camp Rules, 1972 reads as under:

"3. Prisoners who shall ordinarily not be eligible for admission to Open Air Camps.— The following prisoners shall ordinarily not be eligible for admission to Open Air Camps:— ..." **(emphasis supplied)**

A conjoint reading of Rule 3 with the scheme of the Rules of 1972 makes it abundantly clear that the embargo created under Rule 3 is not absolute. The use of the word "ordinarily" is of significance and cannot be rendered otiose. The Rule does not impose a blanket prohibition; rather, it vests a discretion in the competent



authority to consider cases falling within the enumerated categories on their own merits, keeping in view the object of the Rules.

9. The object of the Rajasthan Prisoners Open Air Camp Rules, 1972 is reformatory in nature. The purpose is to encourage good conduct, self-discipline and gradual reintegration of convicts into society. Transfer to an Open Air Camp is not a matter of right, but at the same time, it cannot be denied by applying a straight-jacket formula solely on the basis of the nature of conviction, without examining other relevant factors.

10. The Division Bench of this Court in *Ajit Singh vs. State of Rajasthan & Ors.* has categorically held that mere conviction for an offence mentioned in Rule 3 cannot be the sole criterion for rejection and that the competent authority is required to consider the individual facts of each case. It was further observed that apprehensions based on conjectures, without any material on record, are extraneous and unwarranted.

11. The same principle has been reiterated by Coordinate Benches of this Court in *Himmat Meena vs. State of Rajasthan & Ors.* and *Rajkumar vs. State of Rajasthan*, wherein it has been consistently held that Rule 3 of the Rules of 1972 is directory and not mandatory, and that the expression "ordinarily" mandates an independent application of mind by the Committee.

12. Applying the aforesaid legal position to the facts of the present case, this Court finds that the impugned recommendations dated 14.02.2024 do not disclose any consideration of the





petitioner's jail conduct, the period of sentence already undergone, the satisfactory parole conduct, or any other mitigating circumstance. The rejection is founded solely on the nature of offence, which, in light of the settled law, cannot be sustained.

13. It is also relevant to note that the petitioner has already been found suitable for release on parole and no adverse material has been placed on record to suggest that his transfer to Open Air Camp would pose any threat to public order or discipline. In the absence of any specific adverse report, the apprehension expressed by the respondents remains speculative.

14. In view of the above discussion, this Court is of the considered opinion that the impugned recommendations suffer from non-application of mind and are contrary to the law laid down by this Court.

15. Accordingly, the writ petition is allowed. The adverse recommendations dated 14.02.2024 passed by the State Level Prison Open Air Camp Advisory Committee, Jaipur, in so far as they relate to the petitioner, are hereby quashed and set aside. The respondents are directed to pass necessary orders for shifting the petitioner to a suitable Open Air Camp in accordance with the Rajasthan Prisoners Open Air Camp Rules, 1972, within a period of one month from the date of receipt of a certified copy of this order.

16. It is, however, made clear that the continuation of the petitioner in the Open Air Camp shall always remain subject to





maintenance of good conduct and discipline, and the authorities shall be at liberty to take appropriate action in accordance with law in case of any violation.

(FARJAND ALI),J

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