



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Writ Petition No. 706/2023

Gangaram S/o Shri Gulya Mali, Aged About 28 Years, R/o Chiroli Lalpur Umari, Police Station Sadar Gangapur City District Sawai Madhopur (Raj.) (At Present In Special Central Jail Shyalawas Dausa) Through His Elder Brother Budhram Mali S/o Shri Gulya Mali, Aged About 51 Years, R/o Chiroli Lalpur Umari, Police Station Sadar Gangapur City, District Sawai Madhopur (Raj) 322201



-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur.
2. Prisoners Open Air Camp Advisory Committee, Through Its Director, Jaipur.
3. Director General Of Prisons, Directorate Prisons Rajasthan, Ghatgate, Jaipur.
4. Superintendent Special Central Jail, Shyalawas Dausa.

-----Respondents

Connected With

S.B. Criminal Writ Petition No. 1757/2023

Dhunna @ Munna @ Govind Singh S/o Shri Siya Ram, Aged About 35 Years, Residence Of Village Chawari Ka Pura, Mastura, P/s Sadar Bari, District Dholpur (Raj.). (At Present Confined In Central Jail, Bharatpur) Through His Brother - Ajay Singh @ Tara Chand S/o Shri Siya Ram, Age About 25 Years, Residence Of Village Chawari Ka Pura, Mastura, P/s Sadar Bari, District Dholpur (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Director General, Directorate Prison Rajasthan, Jaipur.
2. The Superintendent Of Central Jail, Bharatpur.

-----Respondents

S.B. Criminal Writ Petition No. 701/2024

Raju Gurjar S/o Shri Parsaram, R/o Near Bright Future



School, Savantsar, Police Station Gandhinagar, District Ajmer (Raj.) (At Present Confined In Central Jail Ajmer) Through His Brother - Munna Lal S/o Shri Parsaram, Aged About 37 Years, R/o Near Bright Future School, Savantsar, Police Station Gandhinagar, District Ajmer (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Central Jail, Ajmer (Raj.)

-----Respondents

S.B. Criminal Writ Petition No. 718/2024

Kishan Lal @ Kishan Singh S/o Shri Sugad, R/o Dhilawati, Police Station Kaman, District Bharatpur (Raj.) (At Present Confined In Central Jail Sewar Bharatpur) Through His Brother - Samandar Singh S/o Shri Sugad, Aged About 46 Years R/o Ghilawati, Police Station Kaman, District Bharatpur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Central Jail, Sewar Bharatpur (Raj.)

-----Respondents

S.B. Criminal Writ Petition No. 852/2024

Ramkuwar S/o Shri Lalluram, Aged About 42 Years, R/o Village Jodhpura, Police Station Narayanpur, District Alwar (Raj.) (At Present In Central Jail, Alwar) Through His Cousin Brother Rajendra S/o Shambhu Dayal, Aged About 34 Years R/o Village Jodhpura, Police Station Narayanpur, District Alwar (Raj.) 301024.

-----Petitioner



1. The State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur.
2. Prisoners Open Air Camp Advisory Committee, Through Its Director, Jaipur.
3. Director General Of Prisons, Directorate Prisons Rajasthan, Ghatgate, Jaipur.
4. Superintendent Central Jail, Alwar.

----Respondents

S.B. Criminal Writ Petition No. 1948/2024

Monu @ Jahid Hussain S/o Jakir Hussain, Aged About 38 Years, R/o Near Neelgaron Ki Masjid, Kanwas, Police Station Kanwas, District Kota Rural (Raj.) (At Present In Central Jail, Kota) Through His Wife Rukhsar Bano W/o Jahid Hussain, Aged About 31 Years, R/o Near Neelgaron Ki Masjid, Kanwas, Police Station Kanwas, District Kota (Raj.) At Present R/o In Front Of The Football Field Sanjay Colony, Police Station Kaithun, District Kota Rural (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur.
2. Prisoners Open Air Camp Advisory Committee, Through Its Director, Jaipur.
3. Director General Of Prisons, Directorate Prisons Rajasthan, Ghatgate, Jaipur.
4. Superintendent Central Jail, Kota.

----Respondents

S.B. Criminal Writ Petition No. 1584/2024

Prem Paswan S/o Shri Dwarika @ Jaril @ Kareli, R/o Paraiya Khurd Police Station Paraiya, District Gaya (Bihar) (At Present Confined In Special Central Jail, Salyawas, Dausa (Raj.) Through His Wife - Rekha Devi W/o Shri Prem Paswan, Aged About 29 Years, R/o Paraiya Khurd, Police Station Paraiya, District Gaya



(Bihar).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj.).
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. Superintendent Special Central Jail, Salyawas, Dausa (Raj.)

-----Respondents

S.B. Criminal Writ Petition No. 673/2024

Mohammad Yahiya S/o Shri Abdul Talib, Aged About 32 Years, R/o Village Salimpur, Police Station Gangarampur, District South Dinajpur, West Bengal At Present Tenant At House No. 61-62, White House, Beg Sahab Colony Ki Thadi, Police Station Amer, District Jaipur Presently Confined In Special Central Jail, Salyawas, Dausa Through His Cousin Brother Mustfa Son Of Iqbal, Aged About 25 Years, Resident Of Janu, Police Station Barsana, District Mathura (Up) 281502.

-----Petitioner

Versus

1. State Of Rajasthan, Through Director General Prison, Directorate Prison, Rajasthan, Ghatgate, Jaipur.
2. The Jail Superintendent, Special Central Jail, Salyawas, Dausa.

-----Respondents

S.B. Criminal Writ Petition No. 470/2022

Amit Kumar Joshi S/o Shri Kailash Chand Joshi, Aged About 40 Years, R/o Indra Market Gangapur City, Police Station Kotwali Gangapur City Distt. Sawai Madhopur (Raj.) (At Present In Special Central Jail Shalyawas Dausa)



----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home Secretariat, Jaipur.
2. Prisoners Open Air Camp Advisory Committee, Through Its Director, Jaipur.
3. Director General Of Prisons, Directorate Prisons Rajasthan, Ghatgate, Jaipur
4. Superintendent Special Central Jail, Shalyawas Dausa.

----Respondents

S.B. Criminal Writ Petition No. 2571/2023

Kailash @ Pintu S/o Shri Ram Lal Chamar, Aged About 29 Years, At Present Lodged In Special Central Jail, Sayalawas Dosha Through His Mother Smt. Leela Bai W/o Shri Ramlal Ji, Aged About 42 Years, R/o Arnod P.s Arnod, District Pratapgarh.

----Petitioner

Versus

1. State Of Rajasthan, Home Depart. Jaipur.
2. The Director General, (Jail) Jaipur.
3. The Superintendent, Special Central Jail, Sayalawas Dosha.

----Respondents

S.B. Criminal Writ Petition No. 2575/2023

Ravi Kumar S/o Shri Murarilal, Aged About 24 Years, At Present Lodged In Central Jail, Bikaner, Through His Mother Prem Devi W/o Shri Murari Lal, Aged About 56 Yeras, R/o Bajwa Rawatsar P.s. Gudagodsi, District Jhunjhunu.

----Petitioner

Versus

1. State Of Rajasthan, Home Depart. Jaipur.



2. The Director General, (Jail) Jaipur.
3. The Superintendent, Central Jail, Bikaner.

-----Respondents

S.B. Criminal Writ Petition No. 2659/2023

Sanjay Singh @ Surendra Singh S/o Shri Khim Singh, Aged About 26 Years, At Present Lodged In Central Jail, Tonk, Through His Father Khim Singh S/o Shri Babu Singh, Aged About 51 Years R/o Village Vorana, Panchayat Sadabhoj Ka Badiya, P.s. Bhim, District Rajasmand.

-----Petitioner

Versus

1. State Of Rajasthan, Home Depart. Jaipur.
2. The Director General, (Jail) Jaipur.
3. The Superintendent, Central Jail, Tonk.

-----Respondents

S.B. Criminal Writ Petition No. 430/2022

Om Prakash S/o Shri Premchand, R/o Arjunpura Jagir, Police Station Mangaliyawas, District Ajmer (Raj.) (At Present Confined In Central Jail Ajmer) Through His Brother Nand Kishore S/o Shri Premchand, Aged About 31 Years, R/o Arjunpura Jagir, Police Station Mangaliyawas, Distt. Ajmer (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent Central Jail, Ajmer.

-----Respondents

S.B. Criminal Writ Petition No. 438/2022





Beerbal @ Jagdish @ Jakhar S/o Shri Ratan, R/o Vill. Shriram Pura, Teh. Dudu, Police Station Narena, Distt. Jaipur (Raj.) (At Present Confined In Special Central Jail Sayalawas, Dausa) Through His Mother Smt. Lali W/o Shri Ratan, Aged About 55 Years, R/o Vill. Shriram Pura, Tehsil Dudu, P.s. Narena, Distt. Jaipur (Raj)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Special Central Jail, Sayalawas, Dausa.

-----Respondents

S.B. Criminal Writ Petition No. 772/2024

Balram S/o Shri Banwari Lal, Aged About 28 Years, R/o Village Dhigariya Kapoor, Police Station Bandikui, District Dausa. (At Present In Special Central Jail, Shyalawas Dausa), (Raj) Through His Father Banwari Lal Meena S/o Shri Muliaram Meena, Aged About 56 Years, R/o Village Dhigariya Kapoor, Police Station Baijupada, District Dausa (Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur.
2. Prisoners Open Air Camp Advisory Committee, Through Its Director, Jaipur.
3. Director General Of Prisons, Directorate Prisons Rajasthan, Ghatgate, Jaipur.
4. Superintendent Special Central Jail, Shyalawas Dausa.

-----Respondents





S.B. Criminal Writ Petition No. 838/2024

Vijendra Kumar @ Bablu S/o Shri Lohdiram, R/o Ratanpura, Police Station Ramgarh Pachwara, Present Police Station Jhabda, District Dausa (Raj). (At Present Confined In Special Central Jail, Salyawas, Dausa (Raj). Through His Brother- Dinesh Kumar Meena S/o Shri Lohdiram, Aged About 28 Years, R/o Badala Ki Dhani, Ratanpura, Police Station Jhabda, District Dausa (Raj).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj).
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj).
3. Superintendent Special Central Jail, Salyawas, Dausa (Ra).

-----Respondents

S.B. Criminal Writ Petition No. 961/2024

Bholu @ Ramganesb S/o Shri Prabhu, R/o Rahir, Police Station Karanpur, District Karauli (Raj.) (At Present Confined In Central Jail, Sewar, Bharatpur) Through His Brother - Bhoor Singh S/o Shri Prabhu, Aged About 22 Years, R/o Rahir, Police Station Karanpur, District Karauli (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Central Jail, Sewar Bharatpur (Raj.).

-----Respondents

S.B. Criminal Writ Petition No. 962/2024





Dinesh S/o Shri Harichandra, R/o Ward No. 6, Near Bharat Gas Agency, Kasba Rajakheda, Police Station Rajakheda, District Dholpur (Raj.) (At Present Confined In Central Jail Sewar Bharatpur) Through His Brother - Shivram S/o Shri Harichandra, Aged About 24 Years, R/o Ward No. 56 Saraswati Vihar Colony, Police Station Nihalganj, District Dholpur (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Central Jail, Sewar Bharatpur (Raj.).

-----Respondents

S.B. Criminal Writ Petition No. 963/2024

Ramhari S/o Shri Harichandra, R/o Ward No. 6, Near Bharat Gas Agency, Kasba Rajakheda, Police Station Rajakheda, District Dholpur (Raj.) (At Present Confined In Central Jail Sewar Bharatpur) Through His Brother - Shivram S/o Shri Harichandra, Aged About 24 Years, R/o Ward No. 56 Saraswati Vihar Colony, Police Station Nihalganj, District Dholpur (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Home, Govt. Secretariat, Jaipur.
2. The Director General Of Prisons, Directorate Prison, Rajasthan, Jaipur.
3. The Superintendent, Central Jail, Sewar Bharatpur (Raj.).

-----Respondents

For Petitioner(s) : Mr. BR Choudhary,
Mr. Vishram Prajapati and



Mr. Govind Prasad Rawat

For Respondent(s) : Mr. Rajesh Choudhary, GA cum
AAG with Mr. Aman Kumar

JUSTICE ANOOP KUMAR DHAND

Order

06/12/2024

Reportable

1. Following common question of law and legal issue has arisen in all these petitions:

"Whether a prisoner convicted and sentenced for the offence punishable under POCSO Act/ Section 376 IPC can be shifted from Jail to Open Air Camp?"

2. Learned counsels for the petitioners submit that this issue has already been decided by the Division Bench of this Court in the case of **Ajit Singh Vs. State of Rajasthan and Ors. (DB Criminal Writ Petition No.52/2022)** vide dated 11.03.2022. Counsel submits that in the aforesaid judgment the Division Bench of this Court has dealt with the issue involved in these petitions and has passed orders for shifting of such convict prisoners to the Open Air Camp. Counsel submits that the view taken by the Division Bench of this Court has been followed subsequently in number of cases by different Single Benches. Counsel submits that recently, the Co-ordinate Bench of this Court in the case of **Aasharam @ Aashu vs. State of Rajasthan and Ors. (S.B. Criminal Writ Petition No.1895/2023)** has taken a similar view and passed orders for shifting of the convict



prisoner to the Open Air Camp. Counsel submits that the aforesaid judgment passed by the co-ordinate Bench of this Court in the case of **Aasharam @ Aashu** (supra) was assailed by the State before the Hon'ble Apex Court by way of filing Special Leave to Appeal (Criminal) No.8666/2024, however, the said SLP submitted by the State against the order passed in the case of **Aasharam @ Aashu** (supra) has been rejected vide order dated 11.11.2024. Counsel submits that this Court in the case of **Narender Versus State of Rajasthan & Another (S.B. Criminal Writ Petition No.291/2022)** has also taken a similar view vide order dated 12.01.2023. Counsel further submits that even on the earlier occasion also the Division Bench of this Court in the case of **Subhash Chand Versus State of Rajasthan & Others**, while deciding **D.B. Civil Writ Petition No.12020/2013** vide order dated 30.08.2013, has taken a similar view, hence, under these circumstances, all these petitions submitted by the convict-prisoners be allowed and the respondent authorities be directed to shift them to the Open Air Camp.

3. Per contra, learned Government Advocate-cum-Additional Advocate General Mr. Rajesh Choudhary opposed the arguments raised by counsel for the petitioners and submitted that the view taken by the Division Bench of this Court in the case of **Ajit Singh** (supra) has been changed subsequently by the same Division Bench in the case of **Rajendra @ Goru Versus State of Rajasthan & Others**, while deciding **D.B. Criminal Writ Petition No.189/2022**



vide order dated 13.07.2022. Counsel submits that considering the provisions, contained under Rule 3 of the Rajasthan Prisoners Open Air Camp Rules, 1972 (for short, 'Rules of 1972'), a view was taken that the word 'ordinarily' has to be considered keeping in mind the gravity of offence attributed to the convict. Counsel submits that the prisoners/convicts who have been convicted with the heinous offence under the POCSO Act cannot be allowed to shift to the Open Air Camp, as those persons would definitely create fear in the mind of the families of other inmates and their children would not be safe, if such prisoners are allowed to stay in the Open Air Camp. Counsel submits that the view taken by the co-ordinate Bench of this Court in the case of **Rajendra @ Goru** (supra) was followed by two different Division Benches of this Court in the case of **Bhag Singh @ Bhagirath Versus State of Rajasthan & Others (D.B. Criminal Writ Petition No.51/2022)** decided on 24.08.2022 and also in the case of **Vipin @ Vinkesh @ Vika Versus State of Rajasthan & Others (D.B. Criminal Writ Petition No.166/2023)** decided on 25.04.2023. Counsel submits that while deciding the case of **Vipin @ Vinkesh @ Vika** (supra), the Division Bench has noted this fact that the judgment passed in the case of **Rajendra @ Goru** (supra) was not brought into the notice of the different co-ordinate Single Benches of this Court and in complete ignorance of the judgment passed in the case of **Rajendra @ Goru** (supra), a conflicting view has been taken. Counsel further submits that in all the above matters,





as relied upon by counsel for the petitioners, the judgments passed by three different Benches of this Court in the case of **Rajendra @ Goru** (supra), **Bhag Singh @ Bhagirath** (supra) and **Vipin @ Vinkesh @ Vika** (supra) have not been taken into consideration, hence, the judgment passed by the different co-ordinate Benches of this Court are *per incuriam*. Counsel submits that though, against the order passed in the case of **Asharam @ Ashu** (supra), Special Leave to Appeal (Criminal) No.8666/2024 was submitted by the State and in the aforesaid SLP, the judgments passed by the three different Division Benches of this Court in the case of **Rajendra @ Goru** (supra), **Bhag Singh @ Bhagirath** (supra) and **Vipin @ Vinkesh @ Vika** (supra) were also submitted but the same could not be brought into the notice of the Apex Court and the Apex Court has rejected the SLP submitted in the case of **Asharam @ Ashu** (supra). Counsel submits that under these circumstances, the petitioners are not entitled to be shifted from Jail to the Open Air Camp, looking to the nature of offence committed by them i.e. under POCSO Act and under Section 376 IPC.

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

5. Rule 3 deals with the ineligibility for admission to the Open Air Camp. Sub Clause (d) says that prisoners who have been convicted for the offences under Sections 121 to 130, 261-A, 224, 225, 231, 232, 303, 311, 328, 333, 376, 377, 383, 392 to 402, 435 to 440 and 460 of IPC shall 'Ordinarily' be not eligible for being sent to the open camp.



6. In the case of **Subhash Chand** (supra), the Division Bench of this Court, while reiterating two earlier views of this Court, held as follows:-



"In the aforesaid judgment, Division Bench reiterating its earlier view in **Krishna & Anr. Vs. State of Rajasthan & Ors. : 2004(4) WLC (Raj.) 582 & Geeta Devi Vs. State of Rajasthan : 2012 (3)WLC (Raj.) 146**, has held in paras 10 & 11 of the said judgment, as under:-

"10. Since Rule 3 of the Rules of 1972 has already been considered and the word 'ordinarily' has already been interpreted as 'not necessarily', therefore, respondents cannot refuse to accept and consider the applications of the petitioners, subject to other conditions. The present matters are fully covered by decisions of this Court in Krishna & Anr. Vs. State of Rajasthan (supra) & Geeta Devi Vs. State of Rajasthan (supra).
11. In view of above discussion, we allow both the writ petitions and direct the respondents to accept and consider the applications of the petitioners for their transfer to open air camp, in accordance with law and in case they are otherwise eligible, as early as possible, but not later than a period of three months from the date of receipt of copy of this order."

In view of above, respondents are directed to transfer the petitioner from District Jail, Alwar to Open Air Camp, Dholpur, where his nephew Madanlal is presently lodged. The petitioner shall have to work in Open Air Camp Dholpur and earn wages.

7. Similarly, in the case of **Ajit Singh** (supra) it has been held as under:

"Manifestly, we are of the firm view that the Committee failed to consider the case of the petitioner in light of the order dated 01.12.2021. No reference was made to the Division Bench Judgment of this Court in the case of Nirbhay Singh (supra) while rejecting the petitioner's application. The restrictions contained in Rules 3 and 4 were again



relied upon for rejecting the application. Another reason has been assigned in the order dated 19.01.2022 that the convict is aged about 27 years. Other convicts are residing in the Open Air Camp with their wives and daughters and hence, the Superintendent of Jail has not recommended the case of the petitioner for being sent to the Open Air Camp. We are of the firm opinion that this observation made by the Committee in the adverse recommendations is absolutely extraneous and unwarranted. Merely because the convict is of young age and other ladies/ girls are living in the Camp, that by itself would not imply that the accused would misbehave with them. Needless to say that if any convict is found behaving in an improper manner while being at the Open Air Camp, the indulgence so granted can always be cancelled because the opportunity to continue at the Open Air Camp is always subject to display of good behaviour by the convict.

As a consequence, the impugned recommendations 19.01.2022 issued by the Open Air Committee, Government of Rajasthan, Jaipur are hereby quashed qua the petitioner. It is hereby directed that the convict petitioner shall forthwith be sent to the suitable Open Air Camp."

8. However, later the Division Bench took a different view in the case of **Rajendra @ Goru** (supra) and held, as under:-

"Rule 3 of the Rules of 1972 postulates that the classes of prisoners, which have been narrated in sub-clauses of Rule 3 of the Rules, would ordinarily not be eligible for being sent to the Open Air Camp. The term 'ordinarily' has been interpreted by this Court in numerous decisions and it has been held that it does not stipulate an absolute prohibition on such a convict for being sent to the Open Air Camp.



However, we are of the definite opinion that while considering the cases of the restricted classes of prisoners as per Sub-clause of Rule 3, the word 'ordinarily' would definitely have to be considered keeping in mind the gravity of offences attributed to the convict. The Open Air Camp facility gives an opportunity to the convicts to be rehabilitated into the society because they can keep their families with them in the campus and they can even move out of the camp during the day time for earning their livelihood. If the prisoners, who have been convicted with the heinous offence under the POCSO Act, are sent to the open air camp, their presence would definitely create a fear in the mind of the families of the other inmates that their children would not be safe if such prisoners are allowed to stay in the open air camp and this could lead to a situation of strife. The convict himself would be at risk as a consequence.

Therefore, we are of the firm view that while considering the word 'ordinarily' even in a liberal sense, the authorities would definitely be justified in taking note of the nature and gravity of offences while considering the application submitted by a convict for being sent to the Open Air Camp more particularly for those who are convicted and sentenced under the POCSO Act and like offences.

As an upshot of the above discussion, we find no illegality or infirmity in the impugned order dated 23.02.2022 whereby, the application submitted by the petitioner for being sent to the open air camp was rejected."

9. Subsequently, the same view was taken by the other Division Bench of this Court in the case of **Bhag Singh @ Bhagirath** (supra) and it has held, as under:-

"It is true that the phrase **ordinarily be not eligible** as referred in Rule 3 and 4 of the Rules of 1972 does not absolutely prohibit



entitlement of prisoners falling in the class enumerated in Rule 3 and 4 to be sent to open air camp as held by this Court in DB Criminal Writ Petition No.38/2018 (*Nirbhay Singh @ Nabbu vs.State of Rajasthan & Ors.*) decided on 04.04.2018 and DB Criminal Writ Petition No.532/2021 (*Sandeep vs. State of Rajasthan & Ors.*) decided on 23.11.2021, however, it is also true that the prisoners who have been convicted for the heinous offences under the POCSO Act cannot ask for sending them to the open air camp as a matter of right. This Court in Rajendra's case(supra) while rejecting the petition of a convict, in which he prayed for sending him to the open air camp, has observed asunder :

"However, we are of the definite opinion that while considering the cases of the restricted classes of prisoners as per Sub-clause of Rule 3, the word 'ordinarily' would definitely have to be considered keeping in mind the gravity of offences attributed to the convict. The Open Air Camp facility gives an opportunity to the convicts to be rehabilitated into the society because they can keep their families with them in the campus and they can even move out of the camp during the day time for earning their livelihood. If the prisoners, who have been convicted with the heinous offence under the POCSO Act, are sent to the open air camp, their presence would definitely create a fear in the mind of the families of the other inmates that their children would not be safe if such prisoners are allowed to stay in the open air camp and this could lead to a situation of strife. The convict himself would be at risk as a consequence.

Therefore, we are of the firm view that while considering the word 'ordinarily' even in a liberal sense, the authorities would definitely be justified in taking note of the nature and gravity of offences while considering the application submitted by a convict for being sent to the Open Air Camp more particularly for those who are convicted





and sentenced under the POCSO Act and like offences."

Resultantly, we are of the view that there is no illegality in the order passed by the Committee whereby, the prayer of the petitioner for sending him to the open air camp has been rejected as he is convicted under POCSO Act and another criminal case is also pending trial against him."



10. Later on, the similar view was elaborately discussed by the another Division Bench in the case of **Vipin @ Vinkesh @ Vika** (supra) and it has held, in paragraphs 12 to 14, as under:

"12. Insofar as, the orders in the case of Ajit Singh (supra) & Rajkumar (supra) are concerned, the Benches, which had passed the orders dated 11.03.2022 & 27.06.2022, have on subsequent occasions delivered the judgments in Rajendra @ Goru (supra) and Bhag Singh @ Bhagirath (supra), which have been noticed herein-before and came to the conclusion that those convicted under Section 376 IPC be not sent to Open Air Camp.

13. So far as, judgments in the case of Ram Lal (supra) and Rajkumar (supra) decided by the Bench at Jaipur are concerned, the said orders being subsequent to the orders passed in the case of Rajendra @ Goru (supra) and Bhag Singh @ Bhagirath (supra) and the said Division Bench judgments having not been considered by the said Single Benches, the said orders are *per incuriam* and cannot be relied on in view of orders in the case of Rajendra @ Goru (supra) and Bhag Singh @ Bhagirath (supra).

14. In view of what has been laid down in the case of Rajendra @ Goru (supra) and followed in the case of Bhag Singh @ Bhagirath (supra), we are firmly of the opinion that the rejection of petitioner's case for being sent to Open Air



Camp by the Committee does not require any interference."

11. It is worthy to note here that the orders passed in the above three matters were not assailed by any of the convict prisoner before the Hon'ble Apex Court, hence the same have attained finality.

12. In-spite of the above three orders, passed by three different Division Benches of this Court, in the case of **Rajendra @ Goru** (supra), **Bhag Singh @ Bhagirath** (supra) and **Vipin @ Vinkesh @ Vika** (supra), and without bringing these judgments into the knowledge, a petition was submitted before the Co-ordinate Single Bench of this Court in the case of **Asharam @ Ashu** (supra) and the same was allowed in complete ignorance of the above judgments. Though, SLP was submitted against the above judgments, by the State before the Hon'ble Apex Court, however, the said SLP (State of Rajasthan vs. Aasharam @ Aashu) was rejected on 11.11.2024, with the following observations:-

"1. In the peculiar facts and circumstances of the present case, we see no reason and ground to interfere with the impugned order passed by the High Court. The Special Leave Petitions are, accordingly, dismissed.

2. Pending interlocutory applications are disposed of.

3. The question of law is kept open."

13. It is clear that the matter of **Aasharam @ Aashu** (supra) has been decided by the Hon'ble Apex Court in the peculiar facts and circumstances of that case, but the





question of law was kept open, hence, the same is liable to be adjudicated now.

14. The question of law of eligibility or ineligibility has not been decided, hence, the same is required to be decided now to avoid further contradictory or conflicting orders to be passed in future.

15. Perusal of the judgments passed by the Division Bench of this Court in the case of **Ajit Singh** (supra), **Subhash Chand** (supra) and the Single Bench judgment passed by the co-ordinate Bench of this Court in the case of **Asharam @ Ashu** (supra), makes it clear that the judgments passed subsequently by three different Division Benches of this Court in the case of **Rajendra @ Goru** (supra), **Bhag Singh @ Bhagirath** (supra) and **Vipin @ Vinkesh @ Vika** (supra) were not brought into the notice and the provisions contained under Rule 3 of the Rules of 1972 were not taken into consideration, hence, under these circumstances conflicting views have been taken by different Division Benches of this Court of equal strength. The judicial decorum and legal propriety demands that where a Single Bench or Division Bench does not agree with the decision of the Bench of co-ordinate jurisdiction, the matter should be referred to the Larger Bench. This view has been taken by the Hon'ble Apex Court in the case of **Sundaradas Kanyalal Bhathija & Ors vs. The Collector, Thane, Maharashtra**, reported in **AIR 1990 SC 261** and similarly, in the case of **Ayyaswami Gounder V. Munuswamy Gounder**, reported in **AIR 1984 SC 1789**, the Hon'ble





Apex Court has held that the Single Bench of the High Court or the Division Bench of the High Court if does not agree with the view taken by the Single Bench or the Division Bench of the same High Court respectively, it should refer the matter to the Larger Bench and the judicial propriety and decorum do not warrant him/them to take a different view.



16. In the case of **S. Kasi Vs. State Through the Inspector of Police, Samaynallur Police Station Madurai District**, reported in **2021 (12) SCC 1**, the Apex Court has held that:

"It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in *State of Punjab and another versus Devans Modern Breweries ltd. and another*, (2004) 11 SCC 26, in paragraph 339 laid down following:-

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See *Pradip Chandra Parija Vs. Pramod Chandra Patnaik*, (2002) 1 SCC 1 followed in *Union of India Vs. Hansoli Devi*, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores (supra)* and *K.K. Narula (supra)* both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown



out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.”



17. Ordinarily, this Court would not go into the merits of this case, once the position of law is settled with regard to the controversy on a particular issue, but the difficulty before this Court is to follow which view, more particularly when there are two different conflicting views on the same issue by the different Division Benches of this Court of equal strength. The Apex Court in the case of **Central Board Of Dawoodi Bohra Community and Ors. vs State Of Maharashtra & Anr** reported in **2005 (2) SCC 673** has held in para 12, which reads as under:

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-



equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh & Ors.* and *Hansoli Devi & Ors.*(supra)."

18. There is no exact decision on the legal issue involved in this petition, rather there are conflicting opinions and views of different Division Benches of this Court, but in the case of **Asharam @ Ashu** (supra), the question of law has been kept open by the Hon'ble Apex Court, hence, the same is required to be decided for all times to come, so that there should be uniformity in the orders on the legal issue involved in these petitions.

19. In a situation like the present one, where two conflicting views have been taken by the different Division Benches and Single Benches of this Court, this Court has no





other option but to refer the matter to the Special/Larger Bench so that the controversy is put to rest in accordance with law.

20. This Court accordingly refers this case to the Special/Larger Bench to answer the following question:

"Whether a prisoner, convicted for the offence under Section 376 IPC/POCSO Act, undergoing the sentence of imprisonment in Jail, can be shifted to Open Air Camp, in view of the Rule 3 of the Rules of 1972?"

21. Let the matter be placed before Hon'ble the Chief Justice on the administrative side for constitution of Special/Larger Bench to answer the aforesaid question, referred by this Court.

(ANOOP KUMAR DHAND),J

KuD/140 to 145,151,330 and 425 to 435

