

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN BENCH AT JAI PUR.

O R D E R

D. B. CIVIL WRIT PETITION NO. 4417/2013.

Saheed @Sai o@Tota
Vs.
State of Rajasthan & Ors.

Date of Order : March 30, 2013.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MRS. JUSTICE NISHA GUPTA

Shri Niklesh Katara for the petitioner.

Smt. Rekha Madnani, Public Prosecutor.

BY THE COURT: -

This writ petition has been filed by the petitioner, who is serving sentence of life imprisonment for offence u/Ss. 302, 460 and 397 IPC pursuant to the judgment of the District & Sessions Judge, Karauli dated 02/04/2003. Petitioner applied vide application Ann. 1 on record for being sent to the open air camp under the provisions of The Rajasthan Prisoners Open Air Camp Rules, 1972 (for short, the "Rules of 1972") but the respondents have so far not forwarded his case to the Director General of Prisons on the premise that according to Rule 3 (m) of the Rules of 1972, the prisoner, which provides that a prisoner who is unmarried shall ordinarily be not eligible for being sent to Open Camp.

Learned counsel for the petitioner has cited the judgment of Division Bench of this Court in *Pyare Lal Vs. State of Rajasthan & Ors.*

(DBCWP No. 437/2013) decided on 15/1/2013 and argued that Division Bench in the aforesaid case has in the context of similar objection by the respondents while referring to Rule 3(m) of the Rules of 1972 held that word 'ordinarily' used in Rule 3 is only directory and not mandatory. It is further held that since the word 'ordinarily' has already been interpreted as 'not necessarily', therefore, application of the petitioner ought to have been considered on its own merit.

Learned Government Counsel has opposed the writ petition.

We have heard learned counsel for the parties and perused the material available on record.

In the aforesaid judgment, Division Bench reiterating its earlier view in *Kishna & 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 *Kishna & 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 consider the case of the petitioner for transfer to the open air camp in accordance with law if he is otherwise eligible within a period of six weeks from the date of receipt of copy of this order. A copy of this order be sent to the Superintendent, Central Jail, Bharatpur for compliance.

With that direction, writ petition is disposed of.

(NI SHA GUPTA), J.

(MOHAMMAD RAFI Q), J.

Anil /13
All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed

Anil Kumar Goyal
Sr. P. A. Cum JW