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

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***Reserved on: 31.07.2023***  
***Pronounced on: 07.08.2023***

+ **W.P.(CRL) 532/2023****SARTAJ @ALLAHARAKHA**

..... Petitioner

Through: Mr. Faraz Maqbool, Advocate  
 (DHCLSC) with Ms. Vismita  
 Diwan, Ms. Sana Juneja, Mr.  
 Chandan Kumar and Mr.  
 Chinmay Chatterjee,  
 Advocates.

versus

**STATE OF NCT OF DELHI**

..... Respondent

Through: Mr. Sanjeev Bhandari, ASC  
 (Crl.) for the State with Mr.  
 Kunal Mittal and Mr. Saurabh  
 Tanwar, Advocates, with  
 Inspector Amarjeet Singh, P.S.  
 H.N. Din, Delhi.  
 Mr. Sushant Bali, Amicus  
 Curie

**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment****Factual Background ..... 3****Arguments By Learned Counsels ..... 3**



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**SWARANA KANTA SHARMA, J.**

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the petitioner seeking issuance of writ in the nature of certiorari for quashing of order dated 18.01.2023 passed by respondent rejecting the application of the petitioner seeking parole, and also for issuance of writ in the nature of mandamus directing the respondent to release the petitioner on parole for a period of 08 weeks for engaging a counsel of his own choice for



filing Special Leave Petition ('SLP') before the Hon'ble Supreme Court of India.

### **FACTUAL BACKGROUND**

2. In the present case, the petitioner was arrested in FIR bearing no. 157/2013 registered at Police Station Hazrat Nizamuddin under Sections 302/34 of Indian Penal Code, 1860 ('IPC') and was taken into judicial custody on 21.06.2013. The learned Additional Sessions Judge-02, South-East, Saket Courts, New Delhi *vide* judgment dated 29.01.2019 convicted the petitioner under Section 302/34 of IPC and by way of order on sentence dated 01.02.2019, the petitioner was sentenced to rigorous imprisonment for life along with fine. Thereafter, the petitioner had preferred a Criminal Appeal No. 923/2019 before this Court against the judgment and order on sentence passed by the Trial Court. However, the said Criminal Appeal was dismissed by this Court *vide* judgment dated 02.09.2022 whereby the conviction and order on sentence as recorded by the learned Trial Court was upheld.

### **ARGUMENTS BY LEARNED COUNSELS**

3. Learned counsel for the petitioner states that petitioner is presently confined in Central Jail No. 14, Mandoli, New Delhi in relation to the present case and since his date of arrest i.e. in the year 2013, he has continuously remained in jail i.e. for a period of more than 10 years and that he was never released on bail or parole. It is argued that the respondent had dismissed the parole application filed



by the petitioner primarily on the ground that the conduct of petitioner in the jail was unsatisfactory and he had been awarded several punishments. However, it is stated by learned counsel for the petitioner that petitioner wishes to avail an opportunity to engage a counsel of his choice for the purposes of filing SLP before the Hon'ble Apex Court which falls under special circumstances for which parole should be granted to the petitioner. Reliance in this regard is placed upon several decisions of this Bench as well as Coordinate Bench of this Court whereby parole has been granted on ground of filing SLP. Learned counsel for the petitioner also accepts that this is a case where the petitioner has repeatedly been awarded punishments in the jail and his conduct has remained unsatisfactory, however, he states that this in fact, reflects upon the state of the petitioner's mental health and even makes a better ground for him to be released on parole as he has continuously remained in judicial custody for more than 10 years.

4. Learned ASC for the State, on the other hand, argues that there is no infirmity in the order passed by the jail authority dismissing the parole application filed by the petitioner. It is argued that there are no other special circumstances which necessitate the exercise of discretion by this Court as in the present case, the conduct of the petitioner, not only in past two years, but since he has remained in judicial custody i.e. for more than 10 years, has been unsatisfactory and he has been awarded several punishments including major punishments during the period of his incarceration. It is thus argued that in the present case, the petitioner ought not to be released on



parole and as far as his right to file SLP is concerned, the same can be very well exercised through jail itself.

5. The arguments addressed on behalf of both sides have been heard and material on record has been perused.

**RELEVANT RULE GOVERNING GRANT OF PAROLE:**  
**RULE 1210 (II) OF DELHI PRISON RULES, 2018**

6. In the present case, the petitioner has been in judicial custody since 21.06.2013 i.e. for about 10 years and 02 months and has not been granted either bail/interim bail or furlough or parole during this entire period. However, the attention of this Court was drawn by the learned ASC for the State towards the order passed by the respondent, which is impugned before this Court, which reads as under:

“1. The convict is not entitled for parole in view of Rule 1210 sub rule (II) of Delhi Prison Rules-2018, which states that:-

**Rule 1210 sub rule (II):- "The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application".**

In this case, as per nominal roll, punishment dated 18.10.2021 awarded to the above said convict is a major punishment as per Rule 1271 of Delhi Prison Rules 2018.

2. As per nominal roll, the overall jail conduct of said convict is reported to be unsatisfactory in view of several punishments from year 2013 to 2021. Superintendent Jail has not recommended grant of parole to the above said convict.



3. Further, as per police verification report received from SHO, PS- H.N.Din, the above said convict has several involvements about in 10 different cases...”

(Emphasis supplied)

7. A perusal of the aforesaid order reveals that the respondent has rejected the parole application filed by the petitioner mainly on three grounds. Firstly, it is stated that the petitioner had been awarded a major punishment on 18.10.2021 and in view of Rule 1210 (II), parole cannot be granted to him. Secondly, it is stated that as per the nominal roll, the overall jail conduct of the petitioner had been unsatisfactory since the year 2013. Thirdly, it is stated that as per police verification report, the petitioner has previous involvement in about 10 other cases.

### **CONDUCT OF THE PETITIONER DURING JUDICIAL CUSTODY**

8. This Court has also perused and examined the nominal roll on record dated 15.02.2023, as per which the jail conduct of the petitioner for the last one year has been mentioned as “*unsatisfactory being punishment dated 19.01.2023:- possession/sale purchase of prohibited item (15 days mulakat and canteen facility stopped) appraisal awaited*”. Further, the overall jail conduct of the petitioner is reported to be unsatisfactory due to 13 punishments awarded to the petitioner, starting from 02.08.2013 till 19.01.2023, during the period of his judicial custody of about 10 years.



9. There is no dispute about the fact that parole can be granted to a convict who seeks to avail his right to file SLP before the Hon'ble Apex Court and pursue his legal remedy before the last court of justice in the country. In this regard, learned counsel for the petitioner has also placed reliance upon several decisions of this Court whereby parole had been granted on such grounds. However, this Court is of the opinion that the present case is clearly distinguishable on facts and circumstances. It will be essential to note the grounds and the frequency of handing out the punishment to the present petitioner, which as per nominal roll, read as under:

**“...1. 02.08.2013, (TWO TABLET OF TOBACCO WAS RECOVERED) MULAKAT, PHONE & CANTEEN FACILITIES ARE TO BE STOPPED FOR 02 WEEKS (DURING UNDER TRIAL PERIOD).**

**2. 23.06.2014, (SURGICAL BLADE WAS RECOVERED) MULAKAT STOPPED FOR 01 WEEKS (DURING UNDER TRIAL PERIOD).**

**3. 28.12.2015 (HANDMADE HEATER WAS RECOVERED) ONE WEEK MULAKAT STOPPED (DURING UNDER TRIAL PERIOD).**

**4. 01.08.2016, (ONE SAMSUNG MOBILE PHONE WITH BATTERY WAS RECOVERED) MULAKAT STOPPED FOR 03 WEEKS (DURING UNDER TRIAL PERIOD).**

**5. 29.01.2017 (HANDMADE HEATER WAS RECOVERED) MULAKAT STOPPED FOR 15 DAYS (DURING UNDER TRIAL PERIOD).**

**6. 25.02.2017 (MISBEHAVED WITH OFFICIAL) MULAKAT STOPPED FOR 15 DAYS (DURING UNDER TRIAL PERIOD).**

**7. 04.05.2017 (PROHIBITED ARTICLES WERE RECOVERED) MULAKAT STOPPED FOR 15 DAYS (DURING UNDER TRIAL PERIOD).**

**8. 25.05.2020 SELF INFLICTING INJURY AND TRYING TO COMMIT SUICIDE (WAIVED OFF).**



**9. 26.05.2020 TRYING TO COMMIT SUICIDE AND MISBEHAVING WITH STAFF (MULAKAT STOPPED FOR 15 DAYS).**

**10. 26.05.2020 MISBEHAVED WITH USED ABUSIVE LANGUAGE AGAINST THE DAP STAFF (MULAKAT STOPPED FOR 01 WEEKS).**

**11. 27.05.2020 TRYING TO COMMIT SUICIDE AND MISBEHAVING WITH STAFF (WARNED BY SCJ).**

**12. 18.10.2021:- CONVICT HAVE MADE PRESCRIPTION OF MEDICINE (CST) AND FAKE SIGNATURE OF MEDICAL OFFICER (07 DAYS MULAKAT STOPPED).**

**13. 19.01.2023:- POSSESSION/SALE PURCHASE OF PROHIBITED ITEM (15 DAYS MULAKAT & CANTEEN FACILITY STOPPED) APPRAISAL AWAITED..."**

10. A perusal of the aforesaid also reveals that the last punishment awarded to the petitioner is of 19.01.2023, which is one day after the impugned order rejecting the parole application of the petitioner was passed by the respondent.

11. In view of above, this Court is of the opinion that the petitioner herein has invited the bar of Rule 1210 sub rule (II) of Delhi Prison Rules, 2018 repeatedly and has thus disentitled himself from seeking parole.

12. However, in these circumstances, it is ordered that a private counsel of his choice will be permitted to meet the petitioner either through jail meeting/*mulakat* or through video conferencing for the purpose of filing Special Leave Petition. The concerned Jail Superintendent is also directed to ensure that the petitioner has access to the Jail Visiting Advocates and the In-charge, DHCLSC is also directed to ensure that the present petitioner is provided with legal aid



assistance for the purpose of filing SLP before the Hon'ble Apex Court against his conviction.

**NEED TO BALANCE LONG PERIOD OF INCARCERATION WITH RIGHT TO MENTAL HEALTH OF PRISONERS**

13. However, the present case has drawn attention of this Court and has unraveled the road less travelled of area of impact of long incarceration of convicted accused persons on their mental health in the prisons.

14. It is human to have frustrations due to long incarceration and physical separation from family. Since reform is the focal point of the reformation theory of punishment, in a case as the present one, when nominal roll is called by the Court, it records the conduct of the convict in the prison. In the present case, when parole had been sought by the present petitioner on the ground of filing of SLP and maintaining social ties, order was passed by the concerned authority rejecting the request for grant of parole on the ground that the overall jail conduct of the convict was reported to be unsatisfactory in view of several punishments from year 2013 to 2021 under the relevant rule. As already observed, the petitioner has been **punished 13 times in his 10 years** of total incarceration in the jail. Further, the contents of the nominal roll, as discussed in the preceding paragraphs, indicate that the petitioner herein has been a regular offender of the prison rules including grave charges such as **fabricating and forging the signatures of medical officer, inflicting self injury and trying to**



**commit suicide thrice, being in possession of prohibited items including tobacco and surgical blade, handmade heater twice, etc.** Apart from this, there is a list of previous involvements of the present petitioner in **about 10 criminal cases.**

15. Despite being confined to prison, the petitioner's conduct has not been satisfactory in the jail and has not once or twice, but on 13 occasions, invited punishment on different accounts. As it is said, if a person will commit a mistake once, it can be ignored or forgiven, but when one indulges in similar or different kinds of acts which are against the prison rules, the same have to be termed as willful defaults committed after fully understanding the repercussions of the same. The petitioner is thus found habitual of indulging in behavior which is forbidden by prison rules.

16. Needless to say, jail discipline is to be followed by all lodged in the jail and in case a convict in prison repeatedly indulges in behaviour of indiscipline and commits acts contrary to the prison rules and conduct to be followed by the inmates, it cannot be ignored or overlooked, as other inmates may follow it too, presuming it does not invite any serious consequences. If discipline is to be maintained in the administration of prisons, **the Court has to balance its discretion in such a manner that the benevolence and affection of the Courts for kindness and leniency is not taken advantage of.**



**i. Inadequacy of Existing Prison Rules To Deal With Mental And Emotional Well-Being of The Convicts**

17. While this Court refers to taking care of mental health of the convicts, it is not referring to a person who is suffering from mental illness as mentioned in Rule 1842 of Delhi Prison Rules, 2018.

18. Chapter XXXV of the Delhi Prison Rules, 2018 deals with mental health and infectious disease. However, a perusal of the relevant rules will reveal that it primarily deals with mental illness and Section 1842 defines mental illness to be used interchangeably with psychiatric disorder or unsoundness of mind, etc.

19. This Court in the present case is not dealing with mental illness issues but the psychological and emotional counseling and support required by the convicts who due to their long incarceration show signs of depression, frustration and frequently indulge in misbehavior and indiscipline. Convicts with long incarceration may suffer from depression and other emotional disturbances in thoughts, feelings and perceptions which may become severe to the extent of affecting their day to day behaviour. This Court on the basis of the information collected from various authentic sources notes that there is difference between mental health and mental illness. The issue of mental and emotional well being is not covered under Chapter XXXV of Delhi Prison Rules, 2018.

20. The life event of long incarceration will generally deprive the convict of positive emotions and satisfaction with life. Fear, anxiety, frustration and anger may drive such convicts to behave differently as



they may consider it as a setback and may not be able to cope with it due to long incarceration. While in majority of cases where the conduct of the convict is satisfactory in the prison, they are able to maintain social ties on being released on parole. However, the convicts as the present one who have invited 13 major punishments are not able to be released on parole also to maintain social ties as they have violated the prison rules repeatedly and disintitiled themselves from being released on parole. In such cases, therefore, the rules under Chapter XXXV of the Delhi Prison Rules, 2018 are of no help as they deal only with mental illness, and not mental and emotional health which is not equivalent or synonymous with mental illness.

## **ii. Reformation and Prison Health**

21. Before parting with this case, this Court also notes that though physical health is of a considerable importance to people, generally mental health issues are not given importance though of significant value for human existence. In the process of dispensation of justice, the administration of prisons by the concerned also plays a crucial and vital role, since it is reformation which is the focal point of detention.

22. Undoubtedly, prisons which are used for incarcerating criminals are able to keep the criminals off the streets, however long prison sentences where the convicts are not taken care of and no attention is paid to their mental health are unlikely to deter future



crimes. **Such convicts may actually learn effective crimes strategies from other prisoners and become disintegrated and fearless of threat of future imprisonment.**

23. This Court also notes that while long sentences are purportedly designed to chasten individuals convicted of crimes, the long incarceration of such convicts and mental health issues of such convicts have to be dealt with delicate care and attention.

24. Thus, the issue which needs to be discussed in the present case is **Prison Health**. Since lot of convicts from the prisons after being released, have to return back to the society, it has to be ensured that they are free from physical and mental health issues. **Right to health of a convict** is not confined to physical health alone but includes right of mental health. Unfortunately, mental health care services are extremely inadequate in comparison to number of prisoners and counselor or doctor ratio.

### **iii. Report of Amicus Curie**

25. The learned *amicus curie*, informed that following activities are available to the inmates in prisons:

“(a) **Sports and Fitness**: The inmates are provided facilities to participate in sports activities like cricket, volleyball, badminton, etc. along with indoor games like carom, chess, etc. The administration also holds various sports competitions and festivals. This encourages inmates to foster team spirit and sportsmanship. The administration also provides the inmates with various fitness equipment to encourage physical exercise.



(b) **Cultural Activities:** Inmates have been provided with dedicated music and dance room equipped with musical instruments, speakers etc. Inmates who know how to play musical instruments or have knowledge of vocals or music and dance in general, are encouraged to practice and teach other inmates. This helps inmates to inculcate hobbies and discover and learn new skills. Jail administration also organizes cultural events like dance and music competitions, plays etc. This provides inmates with a creative outlet and helps them distress.

(c) **Library:** The Jail Administration provides the inmates with a library of books, newspapers, magazines and journals in multiple languages. This encourages literacy and provides intellectual stimulation to the inmates.

(d) **Education/Vocational Training:** The Jail Administration provides inmates the opportunity to take up vocational and educational courses in English/Hindi typing and Commercial Arts, courses in computers, art, commerce, creative writing in Hindi/English, human rights, tourism, management. Inmates can pursue their education through Indira Gandhi National Open University (IGNOU) or National Institute of Open School (NIOS). The Administration also teaches inmates different skills like baking, cooking, carpentry, tailoring, handicrafts etc. and the inmates are compensated for the work done using these skills. This equips inmates with skills that can be beneficial for their reintegration into society upon release.

(e) **Health:** Every jail is equipped with a medical room / dispensary having basic medical facilities and a visiting doctor. The Jail Administration is also equipped to undertake medical procedures and tests such as ultrasound etc. In case a medical facility / treatment is not available inside the jail, the inmate is referred to the attached government hospital. Jail No.3 of the Tihar Jail also houses a hospital that also a dedicated ward to treat mental health issues. In case an inmate requires mental health counselling, the same can also be made available. Various NGOs also visit the jails to hold medical camps.



(f) **Yoga and Meditation:** Every Jail also has a dedicated yoga and meditation room to learn different yoga and meditation techniques to balance, discipline and calm the mind and body. In the past, instructors from various organisations and schools of yoga and meditation like Vipassana, Brahmkumaris etc. have visited the jails to impart knowledge to the inmates.

(g) **Legal Aid:** The Hon'ble High Court (Delhi High Court Legal Services Committee) and District Courts (Delhi State Legal Services Authority) have empaneled Legal Aid Counsels to visit jails and provide legal aid and counselling to the inmates. The inmates also have the facility to avail the legal aid provided by the Committees to approach the Courts for grievance redressal.

(h) **Meeting with Family/Relatives/Acquaintances:** The jail provides the inmates with the option of meeting with their family members, relatives, acquaintances physically as well as virtually through a programme called e-mulakat...”

## **THE JUDICIAL RECOGNITION OF PAIN OF LONG INCARCERATION OF A PERSON**

26. This Court's experience at the Bench has convinced, the Court that incarceration in the jail does not mean loss of liberty alone for the prisoners but brings with itself, pain of separation from one's friends and family and later, the fear of stigma of a served prison sentence. The experience of this Court also convinces the Court that efforts to emphasize upon rehabilitation, correctional programmes, therapies through trained, social therapists, medical treatment which should include corrective as well as curative treatment, psychological services in accordance with the individual's needs and interest, may



result in high percentage of success with convicts with problems related to long incarceration.

27. This Court notes that criminal punishment imposed by the courts is for safeguarding the State and citizens and is acting on behalf of the society. One of the purposes of a sentencing is its retributive value. It has an aim of achieving reduction of crime through deterrence and rehabilitation. The judicial recognition of pains of imprisonment should not be understood as pain resulting from deprivations of liberty alone but it has other multi dimensional deprivation which has a far greater impact on an individual's mental health. Different convicts in prison may experience punishment in a different manner and have with different impact on them. While some may consider sentence hard but fair, helpful and reformative which may be very low in percentage, others may become frustrated and become insensitive and hardened. The offenders may not actually be remorseful or repentant. In this background, incarceration in the prison may bring about positive behavioral change with little effort and counseling in the prison itself which is the goal of confining a convict in prison.

28. While judges sit in the role of presiding over trials and imposing penalties prescribed by law, they remain part of society, understanding the need of making prisons which should be called correction homes as machinery of correction. The judges while dealing with criminal law not only begin and conclude the trial, prosecution and conviction, but with their vast experience in the



criminal judicial system, are able to provide for practical solutions to practical problems.

29. In this background, while it is dangerous to stand with one foot in the past with philosophy of only punishment and penalties, and one foot in the present tilting towards rehabilitation, **it is time to ensure that a convict who leaves the correction home/prison is restored to the society as a law abiding citizen who has repented his past conduct. This can be achieved only if the mental health issues of the convicts in prisons are recognized and attended to, rejecting the notion that this view is too idealistic.**

**DIRECTIONS APROPOS ENSURING MENTAL AND EMOTIONAL HEALTH OF PRISONERS**

30. With these observations, this Court directs the following guidelines to be followed by the prison authorities:

- i. In case a convict in prison shows signs of mental health issues which are reflected through his behaviour, the administration concerned should bring it to the notice of psychiatrist posted in the prison.
- ii. Prison Administration including medical officers should be sensitized with regard to identifying and dealing with issues of mental and emotional health of inmates.
- iii. In case a convict is repeatedly being punished inside the prison, the administration may, in appropriate cases,



refer inmate's case with promptness to the psychiatrist posted in the prison and provide appropriate remedial course of action for the same.

iv. In case a convict is found to be experiencing such mental and emotional health issues in prison, counseling or alternate therapies and meditation facilities be provided to the inmate.

v. An SOP be prepared, detailing the course of action to be followed including the mode and manner of providing alternate therapies and provision for the same be made for such facilities in the prison itself in this regard, the Government of NCT of Delhi will provide the infrastructure and funds.

vi. All the prisons in Delhi should have a counselor/psychiatrist posted throughout the year who will be available to a convict who identifies or recognizes his own emotional or mental health issue or it is identified by the concerned Superintendent Jail/Warden, who will produce such inmate for consultation/counseling before the psychiatrist.

vii. In addition to the existing occasional programs in the prison premises, the DSLSA is directed to include programmes for conducting workshops, which will act as mental health therapies for the convicts in prison. The



DSLISA should ensure that instead of having one or two programs of this nature, it should be a regular feature so that the convicts, throughout the year, have access to benefit of such programmes conducted by DSLISA.

31. While this Court cannot lay down any ideal standard against any actual present practice of the prison authorities, it can surely show and observe what is seriously wanting.

32. This Court, while deciding this matter, also reaches a conclusion that the convicts as the present one, who due to their long incarceration have also been repeatedly indulging in such acts as disclosed above, need regular counseling and psychological help through various therapies as a person's mental health issues due to one factor or another may have driven him to again repeatedly indulge in the acts of indiscipline and violating the prison rules to invite punishment. This also reflects that his confinement in the prison has not served fully the purpose of his reform.

### **CONCLUSION**

33. While an inmate may feel lonely, unloved, unwanted and useless due to long incarceration, sense of not being wanted or cared for will haunt his mind and heart frequently. The Superintendent Jail, warden and other officials can play a crucial role in identifying such prisoners/convicts and take steps to achieve the bigger goal of



protecting the mental integrity and soundness of mind of the convicts in prison, especially those who are incarcerated since long.

34. While imprisonment restricts right to liberty, it does not restrict other human rights of the convict. It is crucial to ensure that the right of prisoners to dignity and their mental and emotional health is protected so that chances of their social re-integration after their release from the prison are increased.

35. Though the controlling, structured, disciplined routine of a prisoner's life is to ensure rehabilitation, in this Court's opinion, the prison administration needs social policy rather than a purely penal policy and there is emergent need to recognize that only social policy will achieve great changes in convicts. While it will require a commitment to reformative philosophy, the implementation of the suggestions and directions to change for betterment, the current sentencing environment will go a long way in achieving the goal of treating the convicts in prisons with dignity and emphasizing on bringing about actual and permanent changes in them.

36. This Court also places on record its appreciation for the learned *Amicus Curie* who very ably assisted this Court on a very short notice.

37. With these directions, the present petition stands disposed of.

38. A copy of this judgment be forwarded to (i) Director General (Prisons), Government of NCT of Delhi, (ii) Secretary, DSLSA, (iii) Principal Secretary, Home Department, Government of NCT of Delhi, (iv) Secretary, Department of Law, Justice & Legislative Affairs, Government of NCT of Delhi, for necessary information and



compliance. A compliance report be filed before this Court within two months. A copy be also forwarded to Jail Superintendent, Central Jail No. 14, Mandoli, New Delhi for information and to be communicated to the petitioner.

39. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**AUGUST 7, 2023/ns**

