



2024:DHC:6785



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

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*Reserved on: 22nd August, 2024
Pronounced on: 04th September, 2024*

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W.P.(CRL) 2483/2024

SANDEEP KUMAR PATHAK

S/o Shri Shiv Kumar Pathak,
R/o IP 09 IIT Delhi, Hauz Khas,
South Delhi, Delhi-110016

.....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Rahul Mehra, Sr. Advocate
along with Ms. Baani Khanna, Mr.
Karan Sharma, Mohd. Irshad, Mr.
Chaitanya Gosain, Mr. Robin Singh &
Mr. Vivek Gaur, Advocates.

versus

1. **THE SUPERINTENDENT CENTRAL JAIL NO 2**

Tihar Jail, Tihar,
New Delhi-110058

.....Respondent No. 1

2. **THE DIRECTOR GENERAL OF PRISONS,**

TIHAR CENTRAL JAIL, TIHAR JAIL,
NEW DELHI-110058

.....Respondent No. 2

Through: Mr. S.G.K Murty Sr. Law Officer, Mr.
Vinod Yadav Jail Superintendent & Mr.
Amrish Goel, Dy. Supd. (Lit.)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J.

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973



has been filed on behalf of the petitioner seeking directions to the respondents to permit him for physical interview with Shri Arvind Kejriwal at Central Jail No. 2, Tihar, Delhi.

It is submitted that the petitioner, who is the Member of Parliament, Rajya Sabha, is a staunch nationalist and has deep roots in the society. He in his capacity as a Member of Aam Aadmi Party, had physically visited Shri Arvind Kejriwal at Central Jail No. 2, Tihar, Delhi on multiple occasions pursuant to and in compliance of Rules 585, 586 and 587 of the Delhi Prison Rules, 2018 (*hereinafter referred to as "DPR, 2018"*) and has never violated any Prison Rules during his visit.

2. On 12.04.2024, the respondent No. 1 granted permission to the petitioner for a physical meeting which was concluded in full compliance of DPR, 2018.

3. On 23.04.2024 at 08:06 A.M., the petitioner sent an e-mail to the respondent No. 1 to confirm the schedule of meeting for himself and Shri Saurabh Bharadwaj with Shri Arvind Kejriwal. However, the respondent No. 1 sent an e-mail on 24.04.2024 at 11:30 A.M. denying the petitioner's request for physical *Mulakat* on the ground that after his physical interview on the previous date, he had issued the political statements in violation of Rule 587 of DPR, 2018 and his *Mulakat* facility was thus, restricted.

4. On 12.06.2024, a follow-up e-mail was sent by the petitioner to respondent No. 1 for reconsideration of the decision to deny the visitation to the petitioner for his physical interview with an assurance that he understands the importance of maintaining the order and discipline within the facility and that he would abide by all the visitation Guidelines and Rules to ensure smooth and disciplined visit.



However, no response till date has been received to the said follow-up e-mail.

5. The petitioner has claimed that his statements made after the physical interview, would fall within the purview of the Fundamental Right guaranteeing the *Freedom of Speech and Expression* under *Article 19(1)(a) of the Constitution of India* which ensures that all the citizens have a right to express their views and opinions freely. The statements made by the petitioner after his physical interview, were well protected under the Constitution of India. The respondent No. 1 has blatantly disregarded the Fundamental Right of the petitioner and erroneously and illegally denied him the visit, using his statement made after the earlier physical interview as violative of the Rules 587 of DPR, 2018.

6. The prayer is made that the physical visitation of the petitioner with Shri Arvind Kejriwal at Central Jail No. 2, Tihar, Delhi be held not in violation of Rule 587 of DPR, 2018 as has been wrongly alleged by the respondent No. 1.

7. Further prayer is made that the respondents be directed to satisfy this Hon'ble court that the denial of permission for physical visit and alleged violation of Rule 587 of DPR, 2018 is justified when Respondent No. 1 has already admitted that the Violation of Rule 587 is attributed to statements made after the physical interview.

8. The **respondent No. 1 in its Reply** has stated that the petitioner was in the list of visitors of the UTP and was permitted to meet Sh. Arvind Kejriwal on two occasions i.e. on 10.04.2024 and 12.04.2024. Rule 587 of Delhi prison Rules *limits* the conversation between the inmate and his visitor to *private and domestic matters with no reference*



is to be made about the prison administration and discipline or politics. Further, the Superintendent Jail may restrict any visitor to conduct interview with any prisoner, for justified reasons.

9. The petitioner, after his physical interview with the UTP on 12.04.2024, gave statements in the media which were in violation of Prison Rules. Consequently, the Prison Administration was constrained to disallow the petitioner's request for physical meeting. It is claimed that had there been any bias against the petitioner, he would not have been allowed meeting on two previous occasions.

10. It is further submitted that the petitioner was aware of his actions and has admitted it in email dated 12.06.2024. Moreover, he took about 2 months to seek a review of the denial of interview with the petitioner.

11. The Respondent No. 1 has placed reliance on judgement of Division Bench of this Court in Jai A. Dehadrai & Anr. vs. Govt. of NCT of Delhi, in W.P. (C) No. 2108/2020 dated 16.02.2023, wherein the Court had rejected the challenge to Rule 585 of the Delhi Prison Rules, 2018, and amendment sought to the effect that legal meetings of inmate be allowed from Monday to Friday, with no cap on time limit.

12. It is submitted by respondent No. 1 that the petition is baseless and is liable to be rejected.

13. **Learned Senior Advocate** on behalf of the petitioner has argued that he is not challenging the constitutionality of the Rule 587 as applicable to the under trials, but the Rule which is intended for the Jail Administration and is applicable to UTPs, cannot be made applicable to the petitioner/visitor who wanted to visit and meet Shri Arvind Kejriwal. The petitioner had been allowed on the earlier occasions to meet Shri Arvind Kejriwal, but when he sought a fresh meeting for



24.04.2024, the same was denied to him *vide* e-mail dated 24.04.2024 by observing that he had violated the Rule 587 of DPR, 2018. The impugned denial of visitation *vide* E-mail dated 24.04.2024 has been challenged as being violative of the *principles of natural justice*, as no opportunity was given to the petitioner before denying him the visitation to physically interview or meet Shri Arvind Kejriwal.

14. It is also claimed that that impugned denial *vide* E-mail dated 24.04.2024 is violative of the *Constitutional Right of Freedom of Speech and Expression guaranteed under Article-19(1)(a)*. While the Jail Authority may have any administrative Rules for the purpose of running the Jail Administration, the same Rules cannot be made applicable to a visitor to express his views and opinions when he is not within the confines of the jail.

15. The impugned denial of visitation is thus, not only in breach of principles of natural justice but is also violative of the petitioner's Fundamental Right of Free Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India.

16. ***Learned Senior Advocate*** on behalf of the petitioner has further argued that even within the scope of the Rule 587 of DPR, 2018, there is no justiciable ground for denying the visitation to the petitioner. The alleged ground for denying the visitation to the petitioner is that after meeting Shri Arvind Kejriwal, the petitioner had made the *political statements* in the media outside the jail. The liberty of the visitor to meet the inmate, who is confined to jail, cannot be curtailed by such arbitrary orders. Moreover, this E-mail dated 24.04.2024 does not have a corresponding Order of the Jail Superintendent approved by the Director General of Prisons. The copy of the Order which has now been



placed on record along with the Status Report, is a procured document as it bears no signature nor does it have any approval of the superior authority. The denial of the visitation to the petitioner on 24.04.2024 is also an overreach of the procedures as prescribed under the DPR, 2018.

17. It is further argued that the terms used in Rule 587 of DPR, 2018 that the conversation shall be limited to *private and domestic matters* and would have *no reference to prison administration and discipline and to other prisoners or politics*, uses the term *politics* in the sense that no loose talks shall be made in regard to co-inmates or the jail officials. It nowhere has a reference to the politics “*as is understood in relation to the political person and thereby political activities*”.

18. In the end, it is argued on behalf of the petitioner that the petitioner being a law abiding citizen and a Member of Parliament, Rajya Sabha, having deep roots in the society, cannot be subjected to such denial of his right to meet Shri Arvind Kejriwal who also is a well-established person and is the Chief Minister of Government of NCT of Delhi.

19. Therefore, the prayer is made that the physical visitation of the petitioner with Shri Arvind Kejriwal at Central Jail No. 2, Tihar, Delhi be held not in violation of Rule 587 of DPR, 2018 as has been wrongly alleged by the respondent No. 1.

20. ***Ld. Counsel on behalf of the Respondent*** has taken a preliminary objection that the person who can be aggrieved by this Order is the jail inmate and not the petitioner who is the visitor whose name has been given by the inmate for visitation. However, no protest or representation has been given by the Jail inmate in this regard.



Therefore, petitioner has no *locus standi* to maintain the present Petition.

21. Learned counsel on behalf of the respondent has further argued that there are admissions of the petitioner himself that he had violated the Delhi Prison Rules by making statements to the public, which were political in nature. It is denied that the principles of natural justice were not followed or that the opportunity of being heard was not granted to the petitioner. It is also asserted that the order declining the physical meeting had been made in writing and duly communicated to the petitioner. He cannot, therefore, claim that the Jail Superintendent did not pass an Order in writing. In the end, it is stated that there is no infirmity in the Order declining the visitation to the petitioner and the petition is liable to be dismissed.

22. Submissions heard.

23. At the outset, it must be noted that the Prison Rules are made for effective and efficient administration of Prisons. The Prison discipline and administration requires stringent and scrupulous adherence to the Rules in order to ensure orderliness is maintained. The Reformist and Rehabilitation Approach underlines the Delhi Prison Rules wherein an endeavour is made to establish a balance between the effective jail administration on one hand, and needs of inmates for social interaction and maintain ties with their family members which is must essential for mental well-being and sanity, while the persons are confined to jail, on the other hand.

Chapter-VIII of the Delhi Prison Rules 2018, titled “Contact With Outside World” has been enacted for this purpose. **Rule 585** provides



for *Reasonable facilities to be allowed for Interviews and Letters*, which reads as under:

“585. Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his property and family affairs.

He shall be allowed to have interviews with his family members, relatives, friends and legal advisers twice in a week. A prisoner may be allowed to work any number of letters at his cost, however government will provide four post cards in a month, if he so desires.”

24. *Rule 585, thus envisions that the Prisoners be provided with reasonable facilities for communicating with “his family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his property and family affairs”.* It further provides for *“interviews with his family members, relatives, friends and legal advisers twice in a week”*.

25. These facilities are stated to be more in the nature of *“Privileges”* rather than *“rights”* in recognition of the *good conduct of the inmate* but is subject to regulation by the Superintendent, as is stated in **Rule 589** which reads as under:

“589. These privileges of interviews with visitors, and of writing letters, are contingent to good conduct. These privileges may be suspended or withdrawn by the Superintendent of prison on grounds of bad conduct.”

26. The privilege of an interview given to the prisoner can only be exercised with the permission of the Superintendent of Prison, who may curtail or withdraw it on account of the prisoner's misconduct in accordance with **Rule 587** which reads as under:



“587. On admission, every prisoner should submit a list of persons who are likely to interview him and the interview shall be restricted to such family members, relatives and friends. The conversation at the interviews shall be limited to private and domestic matters and there shall be no reference to prison administration and discipline and to other prisoners or politics. The number of persons who may interview a prisoner at one time shall ordinarily be limited to three. The Superintendent may restrict any visitor to conduct interview with any prisoner with justified reasons.”

27. Admittedly, the petitioner whose name had been given by Shri Arvind Kejriwal in his list of proposed visitors had a meeting with him on 10.04.2024 and 12.04.2024 which were in accordance with DPR, 2018. However, the petitioner after his interaction with Shri Arvind Kejriwal on 12.04.2024, made the following statements: -

“(i). Kejriwal is CM and will remain the CM and if need he will run the govt. from inside the jail.

(ii). From next week onward, the CM will call two ministers to jail every week, there he will review their departments and give them guidelines & directions.

(iii). He said one more thing, the scheme of giving Rs. 1000/- to women every month, which was a major announcement in the budget, has been passed. Sh. Arvind Kejriwal said that nobody needs to worry about it. He will implement the scheme as soon as he comes out of Jail.”

28. The *first aspect for consideration* is whether such statements tantamount to violation of Rule 587 of DPR, 2018, ***being the political statements which are prohibited under DPR, 2018.***

29. It is evident from the bare perusal of the aforementioned statements that these were the political statements made on behalf of Shri Arvind Kejriwal who though Chief Minister of Government of



NCT of Delhi, is confined to jail precinct and is himself unable to address the public or make such statements.

30. One cannot overlook that while a person in jail, his certain Rights do get suspended/curtailed in order to maintain the discipline in jail. It becomes imperative that the jail inmates during their physical meetings with the visitors do not create an atmosphere which may hamper the prison administration or result in political statements which have large ramifications on general public and may also impact the atmosphere inside the jail. So long as the person is confined to jail, he has to abide by the DPR, 2018 as such conditions on his right to interact in regard to politics or Jail Administration, are evidently to preserve and maintain a proper atmosphere in the jail premises and to control and regulate the conduct of the inmates.

31. It needs to be emphasized that the visitations have been permitted as a privilege to the UTPs in recognition of their right of social interaction with the family members and friends. However, this right is restricted and Rule 587 of DPR, 2018 prohibits and prevents any conversation by specifically providing that “*there shall be no reference to prison administration and discipline and to other prisoners or politics*”.

32. Learned Senior Advocate on behalf of the petitioner has argued that the term *politics* refers to *loose conversation* about the Jail Administration and not to the State Politics as understood in legal parlance, as is evident from the use of these words in Rule 587 of DPR, 2018. However, this argument of the learned Senior Advocate does not hold water. The terms *politics* has been used in DPR, 2018 which are adaptation of the Punjab Jail Manual, 1996. There cannot be such loose



interpretation imputed to the words specifically used in the Rule. The words used in the Rules have to be given its legal meaning. According to the *Cambridge Dictionary* which defines politics to comprise *the activities of the government, members of law-making organizations, or people who try to influence the way a country is governed*. There can be no doubt that the term *politics* has been used in its ordinary parlance and refers to governance of the State.

33. There is not an iota of doubt that the statements made by the petitioner were political, for and on behalf of Shri Arvind Kejriwal and were clearly violative of Rule 587 of DPR, 2018.

34. Interestingly, the petitioner herein had addressed to the Jail Superintendent, an e-mail on 12.06.2024 through his counsel, Mohd. Irshad i.e. after about a month and a half in regard to the impugned denial of the visitation *vide* E-mail dated 24.04.2024, wherein it is stated thus: -

*“To,
The Jail Superintendent
Jail No 2.
Tihar Jail, New Delhi*

Sub: Request for reconsideration of the decision to deny visitation right of Mr. Sandeep Kumar Pathak, Member of Parliament, State of Punjab, for his physical Interview with Sh. Arvind Kejriwal (UTP).

Respected Sir,

This is in reference to your email dated 24.04.2024 wherein your good office has denied the visitation right of Mr. Sandeep Kumar Pathak, Member of Parliament, State of Punjab, for his physical Interview with Sh. Arvind Kejriwal (UTP) on the ground that he violated certain rules.

It was alleged that Mr. Sandeep Kumar Pathak during his visit violated the jail's visitation rules.



Kindly note, he assures that he will not meet the press persons or give any statement against jail authorities after meeting Sh. Arvind Kejriwal and he also understands the importance of maintaining order and discipline within the facility. He also assure you that he will go through all the visitation guidelines and rules to ensure a smooth and disciplined visit.

Therefore, in view of the above scenario he respectfully requests you to reconsider his visitation rights. He is willing to comply with any additional protocols you may suggest to minimize the possibility of future infractions.

Thank you for considering the request. I look forward to your positive response and assure you of my best conduct in the future.

*Thanking you
Your sincerely
Mohd. Irshad (D-3105/12)
Advocate
Dated: 12-06-2024”*

35. While, in the Court, the distorted meaning may have been sought to be given to the words *politics*, but the petitioner himself was aware and conscious that the statements made were political in nature which were absolutely prohibited under Rule 587 of DPR, 2018. The petitioner being conscious of having violated the Rule 587 of DPR, 2018, himself stated that he may be granted visitations in future and that he shall not commit such violation in future. Though much arguments have been made about there being no violation of Rule 587 of DPR, 2018, but from the tone and tenor of the statements made and also the admissions of the petitioner, clearly indicate that there was violation of Rule 587 of DPR, 2018 and the visitation to the petitioner to physically meet Shri Arvind Kejriwal had been rightly denied.



36. The *second argument* made on behalf of the petitioner was that such restrictions are violative of the right of the citizens/visitors and their freedom of speech and expression to make statements once coming out of the jail premises cannot be curtailed. While this argument may look impressive in the first instance, but it cannot overlooked that the Rule restricting the right of the visitor to have political conversations or about the Jail Administration or, in fact, targeted towards the jail inmates and is intended to maintain proper discipline. The petitioner had made the statements for and on behalf of Shri Arvind Kejirwal and he was more like in an agent or spokesperson and his statements cannot be held to have been made by him in exercise of free right to speech and expression or violative of reasonable restrictions imposed by DPR. He is seeking right of physical interview in terms of DPR and must therefore, exercise it in accordance thereof. He cannot on one hand seek right to physical interview according to Rule 589 DPR and on the other hand not abide by the conditions contained therein. Privilege conferred by the Rule would be implemented in its full rigor; the petitioner cannot seek its selective adherence, as per his convenience.

37. Learned Senior Advocate on behalf of the petitioner has further submitted that the impugned denial of visitation to the petitioner *vide* E-mail dated 24.04.2024 *is violative of principles of natural justice*, insomuch no opportunity was given to him of being heard or to explain his side while refusing the physical interview. However, this argument also does not enure to the benefit of the petitioner as he himself in his e-mail dated 12.06.2024, had admitted the violation committed by him and had undertaken to ensure that in future, he would not commit the



same acts. To claim that the impugned denial of visitation to the petitioner *vide* E-mail dated 24.04.2024 being violative of the principles of natural justice, is far from the truth in the light of the admissions of the petitioner himself.

38. Rule 587 of DPR, 2018 provides regulatory authority to the Jail Superintendent who may restrict any visitor to conduct the interview with any person for justified reasons. In any case, the Note had been put up for seeking approval of the superior authority, copy of which has been placed on record.

39. *In the end*, learned Senior Advocate on behalf of the petitioner that the Jail Superintendent failed to follow due procedure as *no written Order* was passed giving justifiable reasons for denying the visitation rights. The Office Noting which has been placed on record does not have any sanctity as neither does it have the stamp nor it is approved by the superior Authority.

40. This argument also is not tenable for the simple reason that the Jail Superintendent had addressed the E-mail giving cogent reasons for denying the physical meeting to the petitioner. The Office Noting so placed on record reflects that on receipt of the e-mail dated 23.04.2024 of the petitioner, the Noting was recorded seeking approval for denying the visitation to the petitioner which was put up before the Senior Officials, and the same had been approved by the superior Authority.

41. For the foregoing discussions, there is no infirmity in the impugned denial of visitation to the petitioner *vide* E-mail dated 24.04.2024.

42. So far as the petitioner has sought that he may be allowed to meet Shri Arvind Kejriwal in future, he is at liberty to move an Application



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seeking visitation which shall be considered by the concerned Jail Superintendent, in accordance with law.

43. Accordingly, the present petition is disposed of, in the aforesaid terms.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 04, 2024

S.Sharma