RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Criminal Writ Petition No. 3456/2026
CNR: RJHC011088262026 | URN: CRLW / 45829U / 2026

Rajasthan High Court
सत्यमेव जयते
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Aslam S/o Abdul Hamid, Aged About 27 Years, At Present Lodged At Central Jail, Jodhpur, Through His Aunt Kanija W/o Ramjan, Aged About 66 Years, R/o 456, Front Of Bdi Masjid, Jodhpur, (Raj).

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary Home Department Government Of Rajsthan Jaipur
2. The Director General (Jail), Jaipur (Raj.).
3. The Superintendent, Central Jail, Jodhpur (Raj.).

----Respondents

For Petitioner(s) : Mr. Kalu Ram Bhati
Ms. Maya Goswami

For Respondent(s) : Mr. Shrawan Singh Rathore, Public Prosecutor
Mr. K.S. Kumpawat for
Mr. Deepak Choudhary, GA-cum-AAG

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

20/11/2026

1. The present criminal writ petition has been filed challenging the order dated 25.08.2026, whereby the application filed by the accused-petitioner for shifting him to an Open Air Camp in terms of the Rajasthan Prisoners Open Air Camp Rules, 1972 (hereinafter referred to as 'the Rules of 1972'), was rejected.

2. The case of the accused-petitioner is that he was convicted and sentenced to twenty years' imprisonment with regard to the charges under Section 376 of the IPC and Sections 5/6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act of 2012'). The accused-petitioner's

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application was rejected on the ground that the accused-petitioner falls under the categories mentioned under Rule 3 of the Rules of 1972 and, as per Rule 4 of the Rules of 1972, he is not entitled to be shifted from the current prison to an Open Air Camp. Assailing the same, the present writ petition has been filed.

3. A Larger Bench of this Court Bench at Jaipur, in ***D.B. Criminal Reference No. 1/2024 : Gangaram Vs. The State of Rajasthan & Ors.***, vide order dated 26.10.2026, has considered the scope of Rules 3 and 4 of the Rules of 1972 and held as follows:

> *"**Dignity and the reformative prison administration***
>
> *13. The Supreme Court has repeatedly recognized that incarceration does not extinguish the constitutional personhood and dignity of a prisoner. In **Sunil Batra vs. Delhi Administration**, their Lordships affirmed that prisoners retain constitutional rights, subject to restrictions inherent in lawful incarceration. As such, where the statutory scheme itself creates a rehabilitative mechanism, its administration should be consistent with dignity, fairness and the reformative purpose of imprisonment.*
>
> ***Finding***
>
> *14. On the basis of aforesaid analysis, we are of the considered opinion that Rule 3(d) read with Rule 4 of the Rules of 1972, neither there is absolute prohibition for admitting a prisoner to the Open Air Camp, nor there is an unrestricted entitlement to be admitted in Open Air Camp for a convict under Section 376 IPC or POCSO Act. The word 'ordinarily' must be given operative meaning. Rule 3(d) establishes the normal position that the specified category of prisoners is not eligible. Reading the meaning of the word 'ordinarily' in light of the judgment of the Supreme Court in the afore-cited*

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judgments, 'ordinarily' does not justify treating that exclusion as absolute in every case. The appropriate legal approach is to require consideration of the individual case where the prisoner places special or exceptional circumstances before the competent authority. At the same time, the authority is entitled, and in appropriate cases required, to consider the nature and gravity of the offence, particularly in POCSO Act cases, along with the other relevant factors prescribed by the Rules.

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Answer to the reference and Conclusion

15. Our answer to the proposed question is as under:"A prisoner convicted under Section 376 IPC or POCSO Act is not totally ineligible for transfer to an Open Air Camp. However, such a prisoner has no automatic right to admission in Open Air Camp, and the nature and gravity of the offence including the age of the victim and the facts of the case are legitimate considerations for the Advisory Committee and the Advisory Committee must make an individualised, reasoned assessment of institutional conduct, reformative potential, risk and readiness for reintegration, and record its reasons for transfer to Open Air Camp, in line with direction C(i) in the matter of ***Suhas Chakma*** *(supra), and where the Advisory Committee finds such a prisoner suitable, it may impose condition to protect other inmates, particularly children, and may revoke the placement on breach."*

16. As such, the decisions of Division Bench noticed in this judgment in the matters of ***Rajendra @ Goru*** *(supra),* ***Bhag Singh @ Bhagirath*** *(supra) and* ***Vipin @ Vinkesh @ Vika*** *(supra) do not lay down correct law and accordingly they are over-ruled. Let the matters be sent to the appropriate Division Bench to deal with application(s) in light of questions of law answered by us, as aforesaid.*

17. The referred question of law is answered accordingly."

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4. On a reading of the above ratio, it is clear that there is no absolute prohibition on admitting prisoners to an Open Air Camp by virtue of Rule 3(d) of the Rules of 1972. Therefore, it was held that the authorities have to consider the case in accordance with Rule 3(d) read with Rule 4 of the Rules of 1972.

5. In view of the said ratio, the impugned order dated 25.08.2026 is liable to be set aside and the same is set aside, and the authorities are required to consider the case afresh, taking the aforesaid legal position into consideration with the said directions.

6. Accordingly, the present criminal writ petition is ***disposed of***.

7. The said exercise shall be completed within a period of one month from the date of receipt of a certified copy of this order.

8. Pending application(s), if any, shall stand disposed of.

(BALJINDER SINGH SANDHU),J **(MUNNURI LAXMAN),J**

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