REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment reserved on: 30.09.2026

Judgment delivered on: 26.10.2026

Judgment (Full) uploaded on: 26.10.2026

D.B. Criminal Reference No. 1/2024
CNR: RJHC021108372024 | URN: CRLRF / 2U / 2024

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. 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

Connected With

D.B. Civil Writ Petition No. 16575/2026
CNR: RJHC020051112023 | URN: CW / 197U / 2026

Kailash S/o Shri Govindram @ Govinda, Aged About 30 Years, R/o Badh Bhogatpura, Police Station Ramgarh Pachwara, District Dausa (Raj.) (at present in Central Jail Jaipur) through his nephew Dayaram Meena S/o Shri Shankar Lal Meena Aged About 24 Years, R/o Badh Bhogatpura, Police Station Ramgarh Pachwara, District Dausa (Raj.)

----Petitioner

Versus

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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, Jaipur.

----Respondents

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D.B. Civil Writ Petition No. 16577/2026
CNR: RJHC020270822023 | URN: CW / 1176U / 2026

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

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4. Superintendent Special Central Jail, Shyalawas Dausa.

----Respondents

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Ms. Neha Goyal, Adv.

Full Bench

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL

HON'BLE MR. JUSTICE SAMEER JAIN

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

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C.A.V. JUDGMENT

Sanjay K. Agrawal, C.J.

For sake of exposition, this judgment/order is divided in following parts:-

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Preface

1. Anoop Kumar Dhand, J., finding divergent view expressed by various Division Benches of this Court on the interpretation of Rule 3(d) of the Rajasthan Prisoners Open Air Camp Rules, 1972 (*hereinafter referred to as 'Rules of 1972'*) has referred

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the matter to Hon'ble the Chief Justice for constitution of a Larger Bench to consider the following question of law:

> *"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?"*

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Conflicting judgments leading to reference to the Larger Bench

Liberal view:

2. The Division Bench of this Court in the matters of **Nirbhay Singh @ Nabbu vs. State of Rajasthan & Ors.**[1], **Sandeep vs. State of Rajasthan & Ors.**[2] and followed in the matter of **Ajit Singh vs. State of Rajasthan**[3]**,** has taken a view that Rule 3 read with Rule 4 of the Rules of 1972 do not absolutely prohibit entitlement of the prisoners falling in the clause appended to Rules 3 and 4 to be sent in the Open Air Camp.

Restrictive view:

2.1. Whereas the Division Bench of this Court in the matters of **Rajendra @ Goru vs. State of Rajasthan & Ors.**[4], **Bhag Singh @ Bhagirath vs. State of Rajasthan & Ors.**[5] and further in **Vipin @ Vinkesh @ Vika vs. State of Rajasthan**[6] has taken a view on interpretation of Rule 3 and 4 of the Rules of 1972, more particularly, with reference to Rule 3(d) of the said Rules, that such convicts may be treated as ineligible for transfer solely on account of the nature of

1 D.B. Criminal Writ Petition No.38/2018, decided on 04.04.2018
2 D.B. Criminal Writ Petition No.532/2021, decided on 23.11.2021
3 D.B. Criminal Writ Petition No.52/2022, decided on 11.03.2022
4 D.B. Criminal Writ Petition No.189/2022, decided on 13.07.2022
5 D.B. Criminal Writ Petition No.51/2022, decided on 24.08.2022
6 D.B. Criminal Writ Petition No.166/2023, decided on 25.04.2023

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gravity of the aforesaid offences (Section 376 IPC or POCSO Act) to be transferred to the Open Air Camp as their presence will create a fear in the mind of the families of the other inmates, and the children would not be safe.

2.2. The learned Single Judge (Dhand, J.) in **Gangaram vs. State of Rajasthan & Ors.**[7], noticed the aforesaid judgments (two lines of the judgments) and further held that in **Aasharam @ Aashu vs. State of Rajasthan & Ors.**[8] this Court did not notice restrictive view taken in the matters of **Rajendra @ Goru** (supra), **Bhag Singh @ Bhagirath** (supra) and **Vipin @ Vinkesh @ Vika** (supra), and allowed the writ petition in ignorance of the said judgments. The SLP in the matter of **Aasharam @ Aashu** (supra) preferred by the State was dismissed on 11.11.2024.

2.3. The question of law was left open leading to making of the reference on the aforesaid question of law, and in order to resolve the dispute, Hon'ble the Chief Justice has constituted the Full Bench vide order dated 26.09.2026. This is how the reference comes up before us for answering the question, so referred by the learned Single Judge.

Concept and Preamble of Open Air Camp and reformative penology

3. The Open Air Camp in Rajasthan is the pre-release half-way mechanism intended to encourage good conduct, self-discipline and social readjustment, among the convicts, framed under clause (18) of Section 59 of the Prisons Act,

7 S.B. Criminal Writ Petition No.706/2023, dated 06.12.2024
8 S.B. Criminal Writ Petition No.1895/2023, decided on 21.03.2024

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1894 (Central Act 9 of 1894) by way of the Rajasthan Prisoners Open Air Camp Rules, 1972 as it has already been referred as the Rules of 1972. In the matter of **Suhas Chakma vs. Union of India**[9], their Lordships of the Supreme Court cited the aforesaid Rajasthan Rules of 1972 as best practice to the prisoners including their families and children residing in camp. The purpose of the Open Air Camp is closely connected with reformative penology. The Supreme Court in the matter of **Rama Murthy vs. State of Karnataka**[10] described the open prisons as a significant instrument of reformative prison management and as one of the most successful application of the principle of individualization of penalties with a view of social readjustment and observed in paras 47 and 48 as under:

> *47. Open air prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desideratum of prison management. They represent one of the most successful applications of the principle of individualization of penalties with a view to social readjustment as stated by B. Chandra in the Preface to his book titled "Open Air Prisons". It has been said so because release of offenders on probation, home leave to prisoners, introduction of wage system, release on parole, educational, moral and vocational training of prisoners are some of the features of the open-air prison (camp) system. Chandra has stated in the concluding portion of Chapter 3 at p.150 (of 1984 Edition) that in terms of finances, open institution is far less costly than a closed establishment and the scheme has a further advantage that the Government is able to employ in work, for the benefit of the public at large, the jail population which would have otherwise remained unproductive. According to the author, the monetary returns are positive, and once put into operation, the camps pay for itself.*
>
> *48. Reference may also be made to what has been stated in Chapter 5 about the change in the human and social outlook, which activities and programmes of these camps bring about. The whole thrust is to see that after release the prisoners may not relapse into crimes, for*

9 2026 SCC OnLine SC 317
10 (1997) 2 SCC 642

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which purpose they are given incentives to live normal life, as they are trained in the fields of agriculture, horticulture etc. Games, sports and other recreational facilities, which form part of the routine life at the open-air camps, inculcate in the prisoners a sense of discipline and social responsibility. The prayers made regularly provide spiritual straight."

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3.1 However, the preamble of the Rules of 1972 states as under:

*"**Preamble.** – Whereas it is necessary to frame rules for sending convicts to Open air camps with a view to encoursage good conduct satisfactory performance of work and a life of self-discipline among the convicts of Rajasthan, and to provide these convicts with a pre-release, opportunity to learn social adjustment and economic self dependence, the Government of Rajasthan in exercise of the powers conferred by clause (18) of section 59 of the Prisons Act, 1894 (Central Act 9 of 1894) hereby makes the following rules."*

3.2 Recently in the matter of **Suhas Chakma** (supra), further the Supreme Court speaking through Sandeep Mehta, J. emphasized the constitutional and penological significance of open correctional institutions. Their Lordships described the effective humane and sustainable responses to overcrowding, which are integral components of a humane, reformative and constitutionally compliant correctional system. Their Lordships found that the Open Correctional Institutions (OCIs) are severely under-utilized because of stringent and non-uniform eligibility criteria and observed in para 61 as under:

"61……..There is, therefore, an urgent need to reorient eligibility criteria towards reformative indicators and to substantially strengthen rehabilitative infrastructure within OCIs, so that they operate as constitutionally compliant institutions of correction, dignity and social reintegration. ……"

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3.3. The direction C(i) under para 73 of the **Suhas Chakma** (supra), requires every State and Union Territory to:

> *"73C(i).....revisit and rationalise eligibility criteria for transfer of prisoners from closed prisons to OCIs, ensuring that such criteria are based primarily on the nature and classification of offences, demonstrated reformative potential, institutional conduct and readiness for social reintegration, rather than rigid or unduly long periods of incarceration in closed prisons. Individualised assessments shall be undertaken through transparent and reasoned procedure, with recorded justification for acceptance or rejection."*

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4. Having taken note of the concept of the Open Air Camp in reference to mandate issued by their Lordships of the Supreme Court in **Suhas Chakma** (supra), we would notice the current framework of Rules 3 and 4 of the Rules of 1972.

Current framework/criteria for consideration to be transferred to Open Air Camps

5. The criteria for the prisoners to be considered for transfer to the Open Air Camp in Rajasthan is prescribed in Rules 3 and 4 of the Rules of 1972. Rule 3 of the said Rules is reproduced as under:

> *"**3. Ineligibility for admission to open air camp**: - The following classes of prisoners shall ordinarily be not eligible for being sent to Open Camp:-*
>
> *(a) to (c) xxxxxx*
>
> *(d) Prisoners who have been convicted of an offence or offences under sections 121 to 130, 216A, 224, 225, 231, 232, 303, 311, 328, 332, 333, 376, 377, 383, 392 to 402, 435 to 440, and 460 of the Indian Penal Code (Act XLV of 1860).*
>
> *(e) to (m) xxxxxx*

5.1. Rule 4 provides for eligibility for admission to the Open Air Camps, as under:

> ***4. Eligibility for admission to Open Camps**: - A prisoner shall be eligible for admission to an Open Air Camp, if :-*

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(a) He does not fall within any of the categories specified in rule 3 above.
(b) He has been regularly performing his scheduled task in the Jail Factory or in Jail Service.
(c) He has served one third term of his substantive sentence including remission."

5.2. A careful perusal of Rule 4 of the Rules of 1972 would show that the prisoners shall not be eligible for admission to an Open Air Camp if he/she does not fall within any of the categories specified in Rule 3 of the said Rules. As such, if he/she falls in the categories of Rule 3, including Rule 3(d), he/she ordinarily should not be entitled for admission to the Open Air Camp. Rule 4 of the Rules of 1972 separately prescribes the affirmative condition of eligibility for admission to the Open Air Camp, which has to be read along with disqualification in Rule 3.

Evaluation and Advisory Committee

6. As per Rule 14 of the Rules of 1972, assessment and evaluation as to whether a prisoner/convict is to be transferred to Open Air Camp is to be done by the Advisory Committee, which consists of (1) Director, Correctional Services, Chairman, (2) Inspector General of Prisons, Rajasthan, (3) Dy. Secretary to Government, Home (Jails) Department, (4) Dy. Inspector General of Prisons (Correctional Programme), (5) Prison Psychologist, and (6) Chief Probation Officer.

Consideration

7. The entire controversy in the present case talks of the proper construction of word 'ordinarily' as it qualifies the ineligibility created by Rule 3; whether it operate as (a) a rebuttable

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merit based threshold permitting the competent authority/court to admit exception upon a consideration of the facts of the individual case, (b) a policy level exclusion which given the gravity of the offence under Section 376 IPC or POCSO Act, ordinarily ought to be given full effect as the Division Bench of equal strength have taken conflicting views leading to the reference to the Larger Bench by the learned Single Judge.

Meaning of expression 'Ordinarily'

8. The Supreme Court has repeatedly explained the meaning of the word 'ordinarily'. The word 'ordinarily' does not signify an inflexible or cast-iron rule and its meaning depends upon the context in which it is used.

8.1 In **Kailash Chandra vs. Union of India**[11], it has been observed that 'ordinarily' means 'in the large majority of cases but not invariably'.

8.2 Similarly, in **Krishan Gopal vs. Shri Prakashchandra & Ors.**[12], dealing with Section 80A, the Supreme Court defined the word 'ordinarily' as not mandatory and held, in para 12, as under:

> *"12. .....The word "ordinarily" does not indicate that the provisions of sub-section (2) of Section 80A are not mandatory and that relaxation in compliance with those provisions is permissible. The word "ordinarily" only qualifies the number of judges who can exercise the jurisdiction which is vested in the High Court to try an election petition. The said word indicates that normally it would be single Judge of the High Court who can exercise the jurisdiction which is vested in the High Court, but in appropriate cases, such jurisdiction can also be exercised by two or more judges."*

11 1961 SCC OnLine SC 293
12 (1994) 1 SCC 128

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8.3 Similarly, in **Union of India vs. Majji Jangamayya**[13], the Supreme Court has held as under:

> *"36. The expression 'ordinarily' in the requirement of 10 years' experience shows that there can be a deviation from the requirement and such deviation can be justified by reasons."*

8.4 In the matter of **Union of India vs. Vipinchandra Hiralal Shah**[14], the Supreme Court has held, in para 9, as under:

> *"9. Clause (1) of Regulation 5 of the Regulations differs from clause (1) of Regulation 4 which was considered by this Court in Mohan Lal Capoor (1973) 2 SCC 836 in the sense that the word "ordinarily" found in clause (1) of Regulation 5 was not contained in clause (1) of Regulation 4. The insertion of the word "ordinarily" does not, in our opinion, alter the intendment underlying the provision. It only means that unless there are good reasons for not doing so, the Selection Committee shall meet every year for making the selection."*

8.5 In the matter of **Commissioner of Customs, Mumbai vs. J.D. Orgochem Ltd.**[15], the Supreme Court, while interpreting the word 'ordinarily', has relied upon the decision in the matter of **Kailash Chandra** (supra) and held, in para 12 and 13, as under:

> *12. Rule 4 of the Rules has a direct nexus with Section 14(1) of the Act. The term used is "ordinarily". The said term has been interpreted by this Court inter alia to mean that there should be an "extra ordinary" or "special" situation so as to enable the competent authority to opine that the transactional value declared by the importer should be disbelieved. It is not suggested that the Customs Authorities are bound by such declaration. It, however, has to rely on contemporaneous evidence to show that the invoice does not reflect the correct value.*
>
> *13. The expression "ordinarily" may mean "normally". It has been held by this Court in Kailash Chandra v. Union of India and Krishangopal v. Shri Prakashchandra and Ors. [(1974) 1 SCC 12], that the said expression must be understood in the context in which it has been used and, thus, "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the Court would not be*

13 (1977) 1 SCC 606
14 (1996) 6 SCC 721
15 (2008) 16 SCC 576

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subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily".”

8.6 The decision of the Supreme Court in the matter of **Union of India vs. Hemraj Singh Chauhan**[16], defining the word ‘ordinarily’ in reference to various institutions, would show that ‘ordinarily’ identifies the normal rule while leaving room for an exceptional case. The statutory context remains decisive, but the word cannot be treated as surplusage. Thus, in Rule 3, the specified prisoners are ordinarily ineligible for admission to the Open Air Camp, but the provision cannot automatically be read as ‘shall never be eligible’. The Supreme Court has held as under:

“40. This Court is not very much impressed with the aforesaid contention. The word `ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word `ordinarily' has been used in the context of promotional opportunities of the Officers concerned. In such a situation the word `ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used.

41. The word “ordinarily”, of course, means that it does not promote a cast-iron rule, it is flexible (see Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671] at SCC p. 682, para 35). It excludes something which is extraordinary or special (Eicher Tractors Ltd. v. Commr. of Customs [(2001) 1 SCC 315] at SCC p. 319, para 6). The word “ordinarily” would convey the idea of something which is done “normally” (Krishan Gopal v. Prakashchandra [(1974) 1 SCC 128] at SCC p. 134, para 12) and “generally” subject to special provision (Mohan Baitha v. State of Bihar [(2001) 4 SCC 350 : 2001 SCC (Cri) 710] at SCC p. 354).”

9. The word ‘ordinarily’ does not mean ‘necessarily’ and as such, the word ‘ordinarily’ employed in Rule 3 is not mandatory and still in discretion of the concerned authority to admit the

16 (2010) 4 SCC 290

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prisoner to Open Air Camp, though the case of the convict may be covered under Rule 3(d) of the Rules of 1972.

10. Individual assessment under Rule 6 of the Rules of 1972 contemplates a selection process rather than automatic transfer. The Rule 6 states as under:

> *"**6. Orders for sending prisoners to Open Camps**:- (a) The Inspector General of Prisons, after going through the recommendations of the Superintendent, or the Dy. Superintendent, In charge of the Jail shall subject to available accommodation from time to time select prisoners to be sent to the Open Camp and submit their case to the Prisoners Open Air Advisory Committee for sanction :*
>
> *Provided that convicts having served longer terms of imprisonment will be given preference over those who have served lesser terms of imprisonment.*
>
> *(b) It would be the discretion of the Prisoners Open Air Camp Advisory Committee to send a prisoner to any of the Camps [and the Director-cum-Inspector General of Prisons may at any time transfer any prisoner from one camp to another camp.]"*

10.1 The Inspector General of Prisons, after going through the recommendations subject to available accommodation from time to time, selects prisoners, through Advisory Committee, to be sent to the Open Air Camp. Provided that convicts having served longer terms of imprisonment will be given preference. The Advisory Committee has discretion to send the prisoner to any of the camps. Under Rule 14, this structure supports an individualised assessment. It also supports the conclusion that special circumstances should not be mechanically equated. The nature and gravity of the offence may, therefore, constitute a distinct relevant consideration when the authority determines whether the 'ordinary' exclusion should be departed from. This is,

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particularly, the significance in cases involving sexual offences against children given the nature of the Open Air Camp.

No automatic right to admission is different from no right to consideration

11. A prisoner falling under Rule 3(d) of the Rules of 1972 cannot claim admission to an Open Air Camp as a matter of right, merely because the word 'ordinarily' is neither absolute nor mandatory. Conversely, the authority cannot refuse even to consider the case solely by stating that the conviction falls under Rule 3(d). As such, Rule 3(d) creates an ordinary exclusion, but it does not totally eliminate consideration of an exceptional case. The prisoner must establish special or exceptional circumstances sufficient to justify departure from the ordinary rule, and the competent authority must record a reasoned decision on the relevant factors. As such, Rule 3(d) as an absolute bar would effectively substitute the expression 'shall not be eligible' for the actual expression 'shall ordinarily be not eligible'. Such a construction would give no operative meaning to the word 'ordinarily'. The decisions of the Supreme Court noticed hereinabove in the matters of **Kailash Chandra** (supra), **Krishan Gopal** (supra), **Majji Jangamayya** (supra), **Vipinchandra Hiralal Shah** (supra), **J.D. Orcochem Ltd.** (supra) and **Hemraj Singh Chauhan** (supra), would show why such a reading should be avoided. However, at the same time, treating 'ordinarily' as creating an unrestricted discretion would also be contrary to the Rule. The exception must remain exceptional. The authority

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considering the application under Rule 14 must, therefore, identify the circumstances which justify departure from the ordinary exclusion.

Non-arbitrary and reasoned exercise of discretion

12. The discretion contemplated under Rule 14 by consideration of application for grant of admission to the Open Air Camp must be exercised consistently with Article 14 of the Constitution of India. The principle of non-arbitrariness requires that relevant considerations be taken into account and irrelevant considerations be excluded. Article 14 does not create a fundamental right to admission to an Open Air Camp. It does, however, reinforce the requirement that the discretion under Rule 3 and Rule 6 along with Rule 14 of the Rules of 1972 be exercised rationally, consistently and upon relevant material, and rejection solely based on Rule 3(d) and that has been effected under Section 376 IPC or POCSO Act, without considering whether special circumstances exist, would risk rendering the word 'ordinarily' ineffective.

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**[17], 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

17 (1978) 4 SCC 494

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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 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.

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

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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.

(PRAVEER BHATNAGAR),J. (SAMEER JAIN),J. (SANJAY K. AGRAWAL),CJ

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