

% 25.11.2009

Present: Mr. Rakesh Kumar for Mr. Navin Chawla, Adv. for the  
Petitioner.  
Mr. Roshan for Ms. Meera Bhatia, ASC for the State.

**+ W.P. (Crl) 1275/2009**

This is a petition under Article 226 of the Constitution seeking three months' parole in order to enable the petitioner to file a Special Leave Petition against the judgment of this Court in Crl.A.No.85/2007 whereby his appeal against his conviction under Section 498-A/304-B IPC was dismissed by a Division Bench of this Court.

2. A perusal of the file in which the request of the petitioner for grant of parole was considered by the respondent would show that parole has been declined to the petitioner on the ground that he has no permanent address and his family is residing in a Jhuggi situated on Government land which can be demolished at any time.

3. Grant of parole being an executive function, it is for the Government and not for the Court to consider the request made by a convict for grant of parole and pass appropriate orders on it. If, however, the order passed by the Government is found to be based on extraneous reasons or on the grounds which are not equally tenable or is otherwise unjust or improper, it is open to the Court, in

appropriate cases, to quash such an order and direct release on parole.

3. If the petitioner belongs to a poor family and consequently does not own a property in Delhi that by itself is not a valid consideration for declining parole. It is not as if the petitioner does not have a family or that his family does not have a fixed place of abode in Delhi. A perusal of the Status Report filed by SHO, Model Town shows that the father of the petitioner is residing in Jhuggi No. C-119, Lal Bagh, Azad Pur alongwith the mother and brothers of the petitioner. The report further shows that Jhuggi where father of the petitioner stays has been given to him by the Government. If owning an immovable property becomes a pre-requisite for grant of parole, no poor man would be able to get parole even if he is otherwise entitled to it on the facts of his case. Therefore, rejection of parole on the ground that the family of the petitioner or the petitioner does not own an immovable property in Delhi, being based on extraneous grounds, is not a proper exercise of the jurisdiction vested in the Government.

4. It has been contended on behalf of the respondent that the petitioner can file Special Leave Petition availing free legal aid that can be provided to him. The Special Leave Petition to the Supreme Court is the last remedy available to the petitioner against his

conviction. He would, therefore, naturally be anxious to ensure that he engages a competent lawyer of his choice who is able to present his case properly and adequately before the Hon'ble Supreme Court. Therefore, his desire to engage a lawyer of his chose cannot be said to be unjustified.

5. Since the family of the petitioner is based in Delhi, there is little likelihood of his fleeing from justice, particularly taking into consideration the nature of the offence alleged to have been committed by him. This is not the case of the respondent that the petitioner is a hardened criminal or is involved in other criminal cases. He is accused of having caused dowry of his wife.

6. Keeping in view all the facts and circumstances of the case, including the nature of the offence alleged to have been committed by the petitioner, I am of the considered view that the order declining parole to him cannot be sustained in law. Hence, the order whereby parole was declined to him is hereby quashed and the petitioner is directed to be released on parole for a period of one month from the date of his release for the purpose enabling him to file a Special Leave Petitioner in Supreme Court. The petitioner shall be released after one week from today. He will abide by the following conditions: (i) he will furnish a personal bond in the sum of Rs.10,000/- with one surety

of the like amount to the satisfaction of the Trial Court; (ii) he will not leave Delhi for any reason whatsoever; (iii) he will mark his presence in Police Station Model Town at 10.00 am on every Sunday. He will also abide by such other conditions as may be imposed by the respondent within one week from today to ensure that he does not flee from justice and surrenders back on expiry of the period of parole.

W.P.(Crl) 1275/2009 stands disposed of with these directions.

**V.K.JAIN, J**

**NOVEMBER 25, 2009**

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