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% 24.11.2009

Present: Ms. Purnima Sethi, Adv. for the Petitioner.
Mr. O.P. Saxena, Addl PP for the State.

+ W.P. (Crl.) No. 1338/2009

This is a petition under Section 482 of Code of Criminal Procedure seeking quashing of the order dated 22nd July, 2009 passed by the respondent, rejecting the application of the petitioner for grant of parole for three months. The petitioner was convicted in a case registered vide FIR No. 346/2003 of Police Station Malviya Nagar under Section 302/394/34 IPC. The appeal filed by him was dismissed by a Division Bench of this Court vide judgment dated 26th February, 2009. The petitioner applied to the Government for parole for three months since he wanted to engage a lawyer to represent him in the Supreme Court and to arrange finances for this purpose. He has alleged that his application has been rejected vide order dated 22nd July, 2009 and therefore he has to come to this Court by way of this writ petition challenging the order passed by the Court.

2. A perusal of document dated 22nd July, 2009, shows that this is not an order rejecting request for granting parole. In fact, parole has been denied vide order dated 1st October, 2009 passed after filing of this petition. A perusal of the order dated 1st October, 2009 passed by

the respondent would show that parole has been declined on the following grounds:-

- (i) Adverse police report that the convict is a hard core criminal & his 3 associates are still to be arrested in this case.
- (ii) Address given by the convict could not be verified.

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 is on the grounds which are not relevant, 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.

4. A perusal of the Status Report filed by the respondent would show that on verification at the native place of the petitioner, village Jharbari in West Bengal, it was found that father of the petitioner was married to two ladies. From the first wife, he had five children, all of whom are married and are living separately and working as casual labourers. From the second wife, he had five children, the petitioner being second amongst them. Both his real sisters are married staying with their in-laws whereas, both his brothers are married and are living separately and working as casual labourers. The parents of the

petitioner have already expired. The petitioner has no family of his own since he has remained unmarried.

5. A perusal of the judgment whereby the appeal filed by the appellant was dismissed, alongwith a perusal of the judgment of the Trial Court, would show that the petitioner alongwith his accomplices committed murder of Smt. Harbans Kaur and committed robbery from her house. The petitioner and his accomplices were carrying out construction work in the house of the deceased when they committed her murder. The case of the prosecution is that the petitioner and his accomplices had hatched a conspiracy to commit murder and robbery and it was pursuant to that conspiracy that deceased Harbans Kaur was murdered by strangulating her to death. After committing murder, the culprits ransacked the house and removed the jewellery kept in the house.

6. In order to file Special Leave Petition before the Hon'ble Supreme Court, the petitioner will have to be based in Delhi. But, admittedly he does not have any fixed place of abode in Delhi. The petitioner is unmarried, and therefore, does not have an immediate family of his own. Both his parents are already died. His sisters are married and settled in their respective families. His brother are living in West Bengal and working as casual labourers.

7. Keeping in view the circumstances in which the murder coupled with robbery was committed by the appellant and his accomplices and the fact that he does not have either an immediate family or any fixed place of abode, there is a strong apprehension that the petitioner, if released on bail, may flee from justice instead of filing the Special Leave Petition against the order whereby his appeal has been dismissed. The apprehension of the respondent in this regard appears to be well-founded and cannot be said to be unreasonable. Therefore, I do not find any good ground to set aside or quash the impugned order dated 1st October, 2009 whereby request for grant of parole was rejected.

8. However, in order to ensure that the petitioner gets appropriate legal aid for the purpose of filing Special Leave Petition, Supreme Court Legal Services Committee is requested to provide the services of a senior counsel to the appellant for arguing the Special Leave Petition that may be filed by him alongwith the services of an Advocate on Record for the purpose of drafting and filing his Special Leave Petition. It is further directed that all expenses in connection with the filing of Special Leave Petition shall be borne by the respondent unless the same are borne by the Supreme Court Legal Services Committee. The advocate, who is provided by the Supreme

Court Legal Services Committee for drafting and filing the Special Leave Petition, would be given the facility of adequate interview and conference with the petitioner either through video conferencing or in person, as the advocate may desire.

9. W.P. (Crl.) No. 1338/2009 stands disposed of with these directions.

Dasti under the signatures of the Court Master.

V.K.JAIN, J

NOVEMBER 24, 2009

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