

+ W.P.(CRL) 1474/2009

versus

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

This is a petition under Article 226 of the Constitution of India, challenging the order dated 3rd September, 2009 passed by the respondent, thereby rejecting the request of the petitioner for grant of parole for three months.

2. The petitioner, who is accused of having committed murder of his wife, was convicted under Section 302 of IPC. His appeal against the conviction was dismissed by this Court vide judgment dated April 28, 2009 in CrI.A. No. 115/2004. The petitioner wants parole for three months in order to file Special Leave Petition before the Hon'ble Supreme Court and to engage an Advocate of his choice and brief him adequately.

3. Grant of parole being an administrative function, it is for the

government and not for the Court to consider such a request and pass appropriate orders on it. If, however, the order passed by the government is based upon irrelevant consideration or is otherwise not equally sustainable, it is permissible for the Court, in appropriate case, to quash such an order and direct release of the petitioner on parole.

4. The petitioner having already lost before a Division Bench of this Court, Special Leave Petition to the Hon'ble Supreme Court is his last resort. Hence, his anxiety and keenness to engage an Advocate of his choice and to adequately brief him so as to enable him to present his case fully and adequately before the Hon'ble Supreme Court is quite understandable.

5. The request for parole has been rejected on the following grounds:

1. Address of the convict not found correct.
2. Possibility of convict's jumping parole by the convict.
3. The convict can file SLP from jail itself, where free legal aid is available.

6. As regards first ground, earlier the respondent made an enquiry at the address given in the nominal roll, though the family of the petitioner has already shifted from there. The respondent has now verified that the father and sons of the petitioner are residing in a house at Bhupender Chowk, Gali No. 2-3, Near Railway Station, Modi Nagar, Distt. Ghaziabad (UP). One son of the petitioner is aged about ten years and another son is aged about eight years. Since the present address of the family of the petitioner is available

and found to be correct, the first ground given by the respondent no more exists.

7. The second ground given is the possibility of the petitioner jumping parole. Such a possibility exists in every case of grant of parole or bail. The Court has to consider all the facts and circumstances of the case including the family structure and place of residence of the family and the circumstances in which the crime is alleged to have been committed, to find out whether there is any reasonable likelihood of the petitioner jumping the parole and not surrendering on the expiry of the term for which the parole is granted. Since the father as well as two sons of the petitioner are residing in Modi Nagar, there is no reasonable likelihood of the petitioner jumping the parole. In any case, it is open to the respondent to take such steps as would ensure that he does not jump the parole.

8. The last ground given by the respondent for rejecting parole is that the petitioner can file a Special Leave Petition from jail itself where free legal aid is available. As noted earlier, a Special Leave Petition is the last resort available to the petitioner. He would, therefore, like to engage the best Advocate he can and to adequately brief him on the defence taken by him. Therefore, the third ground for rejecting the parole is not good enough to be sustainable in law.

9. For the reasons given in the preceding paragraphs, the order dated 3rd September, 2009 passed by the respondent rejecting request of the petitioner for grant of parole is hereby quashed and the petitioner is

directed to be released on parole for a period of one month after one week from today, subject to the following conditions:

1. During the parole, the petitioner shall not visit any place other than Delhi and Modi Nagar.
2. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial court.
3. The petitioner shall comply with such other conditions as the respondent may impose within one week, to ensure that he does not jump parole.

The W.P.(Crl) No. 1474/2009 stands disposed of.

V.K. JAIN, J

DECEMBER 01, 2009
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