

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(Crl.) 327/2010

% Date of Order: 17th March, 2010

GULAB @ GURU Petitioner

! Through: Mr. Gaurav Bhattacharya for
Mr. Ajay Verma, Adv.

versus

\$ STATE OF THE NCT OF DELHI Respondent
^ Through: Mr. Piyush Singh for Mr. Vikas
Pahwa, ASC with SI Girraj
Singh P.S. Badarpur.

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

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

: **V.K. JAIN, J. (Oral)**

1. This is a petition under Article 226 of the Constitution
challenging the order passed by the respondent on 4th
December 2009 refusing parole to the petitioner.

2. The petitioner, who has been convicted in the case registered vide FIR No. 131/2002 of Police Station Badarpur under Section 302/34 of IPC, filed an appeal to this Court, which was dismissed vide judgment dated 28th May 2008 passed in Criminal Appeal 571/2007. Since the petitioner wanted to file Special Leave Petition before the Hon'ble Supreme Court, he applied to the Government for grant of parole. The request was turned down on the following grounds:

- i. Jail conduct is unsatisfactory.
- ii. The address of the convict could not be verified.
- iii. Adverse police report regarding apprehension of jumping the parole.

3. Grant of parole is primarily an executive function and, therefore, it is for the Government to consider the request made by a convict for grant of parole and pass appropriate order on it. If, however, it is shown that the order passed by the Government is based upon irrelevant considerations or on non-existing facts or is otherwise unsustainable in law, it is open to this Court, in exercise of its jurisdiction under Article 226 of the Constitution to quash such an

order and direct the release of the convict on parole.

4. While deciding WP(Crl.) No.1749/2009 wherein parole was sought to file special leave petition before the Hon'ble Supreme Court, against an order dismissing the appeal filed by the petitioner, I inter alia observed as under:

“The request for grant of parole, to file SLP before the Hon'ble Supreme Court against conviction and sentence for a serious offence certainly stands on a stronger footing than the desire to maintain links with the society and to reunite with the family. Hence, ordinarily such requests ought to be allowed unless there are reasonable grounds which warrant taking a different view in a particular case. Such grounds may include:

i) A reasonable apprehension, based upon material available with the Government such as the circumstances in which the offence is alleged to have been committed by him and the other cases if any in which he is involved, that the petitioner, if released on bail may not return back to Jail to undergo the remaining portion of the sentence awarded to him;

ii) A serious apprehension of breach of law and order or commission of another offence by the petitioner if he comes out on parole;

iii) Past conduct of the petitioner such as jumping the bail or parole granted earlier to him;

iv) A reasonable possibility of the petitioner trying to intimidate or harm those who have deposed against him or their relatives.

5. It is neither possible nor desirable to exhaustively lay down all such grounds as would justify denial of parole in a particular case. Each case has to be examined by the Government dispassionately and with an open mind, taking into consideration all relevant facts and circumstances.
6. Coming to the ground on which parole has been declined to the petitioner, a perusal of the nominal roll dated 13th February 2010 shows that the conduct of the appellant in the jail has been satisfactory. The respondent has not told the Court as to on what basis it had come to the conclusion that the jail conduct of the appellant was unsatisfactory. Considering the report of the Jail Superintendent, inference drawn by the respondent seems to be totally unfounded and without any basis.
7. As regards the second ground, the report filed by SHO Police Station Badarpur shows that Smt. Munni Devi, wife of the petitioner, is residing in Jhuggi No. 161, Subhash Camp, Near NTPC Gate No.1, Badarpur, along with her

three children. She is working there as a labour. Her statement has been recorded by the police officer and Election Identity Card of Smt. Munni Devi has also been obtained. Therefore, it cannot be said that the address of the petitioner will remain unverified. Hence, the second ground on which parole was declined to the petitioner does not exist anymore.

8. As regards the third ground, the order passed by the Government does not disclose any particular circumstance which would justify the apprehension that the petitioner was likely to jump parole. Admittedly, the petitioner is not a previous convict. Admittedly, he is not facing trial in any other case. Though the possibility of a convict jumping parole or a convict/undertrial prisoner jumping bail cannot be ruled out in any case, that by itself cannot be a ground to deny parole/bail in every case, unless there is material which would indicate that it was probable. In this case there is no material justifying a reasonable apprehension that the petitioner, in the event of being granted parole, was not likely to return back to the jail.

9. The appeal filed by the petitioner having being dismissed by

Division Bench of this Court, Special Leave Petition before the Hon'ble Supreme Court is the last resort which he can have in order to prove the innocence which he claims. Therefore, anxiety of the petitioner to engage a counsel of his choice and to brief him fully and adequately in order to enable him to present his case before the Hon'ble Supreme Court, effectively and to his complete satisfaction cannot be disputed and needs to be appreciated.

10. For the reasons given in the preceding paragraphs, the impugned order whereby parole was declined to the petitioner is hereby set aside and the petitioner is directed to be released on parole for a period of one month, from the date of his release, after two weeks from today, subject to the following conditions:-

- i. He shall 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 shall not visit any place other than Delhi, during the period he remains on parole.
- iii. He shall supply a copy of the Special Leave Petition filed by him to the concerned SHO within 24 hours of his

being released from Jail.

iv. He shall mark his presence in Police Station Badarpur, New Delhi at 10:00 A.M. on every Sunday.

v. He shall comply with such other conditions as the Government may decide to impose within two weeks from today, in order to ensure that he does not escape, while on parole.

W.P.(CrI.) 327/2010 stands disposed of.

(V.K. JAIN)
JUDGE

MARCH 17, 2010

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