

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) 842/2010**

Decided on 22.09.2010

IN THE MATTER OF :

BHAGWAN DASS Petitioner
Through: Mr. Rajesh Mahajan, Advocate

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Sanjeev Bhandari, ASC for the State
with ASI Shripal Singh, PS Rajender Nagar.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present writ petition is filed by the petitioner praying *inter alia* for releasing him on parole for a period of three months to enable him to search a suitable match for his marriageable daughter, transfer his son from the private school to a government school in the higher classes, and to re-establish social ties with his family and the society.

2. A status report is handed over by the learned ASC for the State and taken on record. Enclosed with the report is the rejection order dated 24.06.2010 passed by the Govt. of NCT of Delhi, on an application filed by the wife of the petitioner for parole. The request for parole was rejected on two grounds. Firstly, it was stated that the ground given for parole by the

petitioner was not covered under the Parole/Furlough Guidelines, 2010. Secondly, it was stated that the petitioner had recently surrendered in jail in January 2010, and therefore, it was premature to grant parole to him. In the status report, it is averred that a report was called for from the concerned police authorities and as per the intimation received, the address given by the petitioner is genuine, the petitioner's family is residing at the given address for the past four years, his daughter is 22 years of age and unmarried. The victim is stated to be residing at Inderpuri. Learned ASC for the State submits that the permanent address of the petitioner is at District Doasa, Rajasthan. However, in view of the address of the petitioner given in the memo of parties, which is situated at Gurgaon, Haryana, a report in respect of the petitioner was sought from the Commissioner of Police, Gurgaon and is enclosed with the status report. The same does not mention anything which is adverse to the petitioner.

3. The main reason for rejection of the request for grant of parole to the petitioner was the fact that he had surrendered in jail in January 2010 and the grounds taken by him for parole were not found covered under the Parole/Furlough Guidelines, 2010. In response, counsel for the petitioner relies on the nominal roll of the petitioner to state that he has already undergone sentence, including the undertrial period, for over two years and as far as his surrendering in jail in January 2010 is concerned, the said surrender was not pursuant to grant of any parole to the petitioner, but on account of dismissal of his appeal by a Single Bench of this Court.

4. This Court has perused the record and also considered the submissions of the respective parties.

5. It has been observed by the Supreme Court in the case of Poonam Lata vs. M.L. Wadhawan, reported as **(1987) 3 SCC 347**, that "Release on parole is a wing of reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen."

6. Grant of parole is an executive function and ordinarily, it is for the Government and not for the Court to consider such a request and take a decision thereon. However, the orders passed by the Government can certainly be scrutinized to examine, if they are based on extraneous and/or irrelevant consideration. As observed in the case of Shakuntala Devi Vs. State reported as **ILR (1996) I Delhi 709**, "If the Court finds that any Governmental action in rejecting the grant of parole to a prisoner has the effect of suffocating the Article 14 or Article 21 of the Constitution, then the court must act, will act to restore the rule of law and respect the residuary fundamental rights of an aggrieved prisoner." It has also been held by this Court in Shakuntala Devi (supra) that:

"(6) It has to be borne in mind that the exercise of all administrative power vested in public authority must be informed by both relevance and reason, relevance in relation to the object which it seeks to serve and reason in regard to the manner in which it attempts to do so. **Therefore, in construing the question of grant of parole to a prisoner, the Government in the scheme of the prison administration must take a constructive and purpose oriented approach, and exercise its beneficent jurisdiction wisely. In such matters, the representation made by the prisoner must be construed liberally and not technically so as to frustrate or defeat the therapeutic treatment, hospital setting and correctional goals.**"(emphasis added)

7. In Inder Singh Vs. State reported as **AIR 1978 SC 1091**, the Supreme Court had devised another humanising strategy, viz, a guarded parole release every year at least for a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by living in a small world of his own cribbed, cabined and confined within the four walls of the prison. In the case of Inder Singh (supra), the Supreme Court directed that:

“12. If the behavior of these two prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further buildup. After every period of one year, they should be enlarged on parole for two months.....”

8. Having regard to the fact of the present case, it is an undisputed position that the petitioner has a daughter aged 22 years, who is of marriageable age; it has been confirmed that the petitioner is residing at the address given in the memo of parties, as per the nominal roll, his conduct in jail is stated to be satisfactory; there is no other pending case against him except for the present one. The petitioner has already undergone sentence for approximately 2 years and 3 months in the present case. The justification for parole given by the petitioner, of searching a suitable match for his daughter is reasonable. The submission of the learned ASC for the State that the said ground is not covered under the guidelines, is answered by the counsel for the petitioner, by handing over a copy of the order dated 20.08.2010, passed by the Joint Secretary (Home), Govt. of NCT of Delhi, in the case of a convict, Dharam Pal in FIR No.451/1995, under Sections

302/34 IPC wherein, the ground for searching a suitable match for the daughter of the said convict and to re-establish social ties with the family was considered sufficient for granting him parole for a period of one month.

9. In view of the aforesaid facts and circumstances, the petitioner is granted parole for a period of one month, subject to the following conditions:-

- (i) The petitioner shall furnish a personal bond in the sum of Rs.30,000/- with one surety of the like amount to the satisfaction of the trial court.
- (ii) The petitioner shall mark his presence before the SHO of Police Station: Gurgaon at 10:00 AM on every Sunday and during the period of parole, he shall remain in the National Capital Region of Delhi.
- (iii) The petitioner shall keep away from the area around the residence of the victim and her family members.
- (iv) Immediately upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.
- (v) The period of parole shall be counted from the day after the date when the petitioner is released from jail.

10. The petition is disposed of.

DASTI.

SEPTEMBER 22, 2010
rkb

(HIMA KOHLI)
JUDGE