

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) 1452/2010**

Decided on 22.11.2010

IN THE MATTER OF :

HARI OM

..... Petitioner

Through: Thakur V.P.S. Charak, Advocate

versus

THE STATE (GNCT OF DELHI)

..... Respondent

Through: Ms. Meera Bhatia, ASC for the State

CORAM

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

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| 1. Whether 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 |

HIMA KOHLI, J. (Oral)

1. The present writ petition is filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C praying *inter alia* for grant of parole for a period of 3 months for the purpose of filing a SLP before the Supreme Court of India, against the judgment dated 25.01.2010 passed by the High Court, dismissing Criminal Appeal No. 605/2007 and for re-establishing social relations with his family members. The petitioner has been sentenced by the learned ASJ to undergo rigorous imprisonment for 12 years and pay a fine of ₹25,000/- in default thereof, simple imprisonment for 2½ years in FIR No. 724/2007 registered at PS Sultan Puri, under Sections 363/376(2)(f) IPC. Vide order dated 28.01.2010,

the High Court had reduced the sentence imposed on the petitioner to three years rigorous imprisonment under Section 363 IPC and a fine of ₹5,000/- in default thereof, simple imprisonment for 3 months and ten years rigorous imprisonment under Section 376(2)(f) IPC and a fine of ₹15,000/- in default thereof, simple imprisonment for 6 months with the directions that both sentences were to run concurrently.

2. The Counsel for the petitioner states that the order dated 24.06.2010 passed by the Govt. of NCT of Delhi, rejecting the application of the petitioner for grant of parole may be set aside. A perusal of the order of rejection shows that parole has been denied to the petitioner on the ground that the victim, who was a minor at the time of the incident and still is a minor, is residing next door to the petitioner and his release may traumatize her and affect her mental growth.

3. The nominal roll of the petitioner was called for. As per the said nominal roll, against a quantum of sentence of ten years rigorous sentence, the petitioner has already undergone a sentence of six years, one month and twenty nine days as on 3.09.2010 and earned remission for one year, one month and twenty one days. His jail conduct for the past one year is stated to be satisfactory.

4. A status report is filed by the SHO of the area, which shows that verification of the application of the petitioner was carried out by the police authorities. On enquiry, it was found that the petitioner has two brothers who are looking after the petitioner's family including his two children. Learned ASC submits that since both the brothers of the petitioner are financially sound, they can help in filing of the SLP.

5. The learned ASC for the state has expressed a grave concern that the victim was a minor at the time of the incident and is a minor even today, and granting of parole to the petitioner, who resides next door to the victim, might traumatize her mind. In response, counsel for the petitioner submits that he has no objection to a condition being imposed on the petitioner that he shall not visit the locality where the victim resides during the period of the parole.

6. The ground taken by the petitioner for grant of parole in the present petition is filing of SLP against the judgment of the High Court in Crl. Appeal No. 605/2007. The desire of the petitioner to prepare his case, to his utmost satisfaction, so that he may be able to effectively pursue his legal remedy in the last court of appeal in the country, cannot be treated lightly. The petitioner ought not to be denied parole for filing a SLP particularly, since he has already undergone over half the portion of sentence, his jail conduct is stated to be satisfactory and there is no pending case against him.

7. In this view of the matter, the present petition is allowed. 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 ₹10,000/- with one local surety of the like amount, to the satisfaction of the trial court.
- (ii) The petitioner shall not visit the locality where the victim resides, or approach the victim or any of her family members during the period of parole.

- (iii) The petitioner shall report to the SHO of Police Station: Begumpur, once a week on every Sunday at 10:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.
- (iv) The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.
- (v) Immediately upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.
- (vi) The petitioner shall furnish a copy of the SLP filed in the Supreme Court to the Superintendent Jail at the time of surrendering.
- (vii) The period of parole shall be counted from the day after the date when the petitioner is released from jail.

8. The petition is disposed of.

DASTI.

NOVEMBER 22, 2010
pm

(HIMA KOHLI)
JUDGE