

HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CrI.) No.1486/2011

Date of Decision: 16.11.2011

SIDDHARATHA VASHISHTA

... Petitioner

Through: Mr.Ram Jethmalani,
Sr.Adv. with Ms.Purnima
Sethi, Mr.Harsh Ghai,
Ms.Lata Krishnamurti,
Mr.Pravan Diesh and
Mr.Karan Kalia, Advs.

Versus

STATE

...Respondents

Through: Mr.Pawan Sharma,
Standing Counsel with
Mr.Harsh Prabhakar,
Adv. for the State.
SI S.P. Singh, PS
Mehrauli.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

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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 |

V.K. SHALI, J.

1. By way of this petition, filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioner, a life convict in Jessica Lal Murder case, has challenged the order dated 21.10.2011, passed by the respondent, rejecting the application of the petitioner for grant of parole for a period of three months. The request for parole, although recommended by the Jail authorities was rejected by the respondent on the ground that the petitioner had earlier violated the terms and conditions of the parole.

2. Mr.Ram Jethmalani, learned senior counsel appearing on behalf of the petitioner, has strenuously contended that the rejection of the prayer of the petitioner for grant of parole by the respondent was totally arbitrary, irrational and without any merits. It was also contended by him that the petitioner had been

consistently maintaining good conduct for which he had been issued commendation certificates by the Jail authorities. It was urged that the respondent itself has framed the guidelines for the grant of parole, which have been notified vide order dated 17.02.10, in terms of which parole can be granted in case there is marriage of a family member of the convict and with a view to enhance the continuity with the family members and to develop a positive attitude and interest in life. It was further contended by Mr.Jethmalani that vide circular, dated 26.07.11, it was also clarified by the respondent that while dealing with the application for grant of parole or furlough in terms of the guidelines of 2010, the conduct of a convict for the last one year is only relevant.

3. In this context, it was urged by the learned senior counsel that the denial of parole to the petitioner on the ground that on the previous occasion, when parole was

granted to the petitioner, he was found in a nightclub was irrelevant because it travels beyond the period of one year as specified by the guidelines of the respondent. Apart from this, it was contended that the petitioner was granted parole not only for performing the religious rituals of his departed grand-mother, but also to maintain social ties and to attend to his neglected business, wherein it was specified that his ordinary place of residence was at House No.226, Sec-9, Chandigarh. It is contended that it did not prohibit the petitioner from visiting Delhi or any restaurant or club which the respondent is claiming to be a nightclub to transact the business. It was also urged by Mr.Jethmalani that there was no negative covenant in the terms and conditions of grant of the earlier parole that prohibited the petitioner from visiting the discotheques or nightclubs.

4. Mr.Jethmalani, in order to support his submissions has stated that there are other parole orders, which

have been placed on record by the petitioner, wherein specific prohibition has been imposed on the convict from going in a particular area, which was not imposed in the case of the petitioner and, therefore, he was not prohibited from visiting a nightclub or a restaurant. Accordingly, it is prayed that in order to maintain social ties and to attend the wedding of his brother, the petitioner may be enlarged on parole.

5. Mr.Jethmalani also drew the attention of the Court to the counter affidavit of the respondent and contended that the irrationality in the stand of the respondent is further reflected by its averments in the status report wherein it has prayed to the Court that the guidelines of parole 2010 framed by it only may be ignored and the parole be denied to the petitioner.

6. Mr.Pawan Sharma, learned standing counsel for the State, has very fairly did not oppose the grant of parole

to the petitioner subject to his furnishing an undertaking that he shall not visit any place other than Karnal and Ambala, where the marriage ceremonies are likely to be performed although he has defended the decision of rejection of parole taken by the respondent.

7. I have considered the submissions made by the learned senior counsel for the petitioner as well as learned standing counsel appearing for the State and gone through the record. The respondent itself has notified guidelines on 17.02.2010 for grant of parole and furlough. The objective of these guidelines has been specifically laid down in the relevant Clauses, which are reproduced as under:

- "3.1 To enhance continuity with family members.
- 3.2 To maintain a minimum level of self-worth and confidence.
- 3.3 To develop a positive attitude and interest in life.
- 3.4 To combat inner stress.

3.5 To protect social ties.”

8. The aforesaid five reasons for grant of parole fairly lay down that although a person may have suffered conviction but the entire purpose of sentencing a convict to punishment, is not to make him redundant and useless. On the contrary, the approach of the punishment is reformatory and in order to bring such reformation in the convict it is essential that he must be permitted to maintain positive attitude, continuity of social ties and minimum level of self-worth so that he does not go in depression. It is with this intention that the guidelines have considered certain occasions as imperative, where a person can be given the concession of parole on certain occasions some of which are given by way of illustrative examples as death of a family member, marriage of a family member or serious illness of a family member or such other circumstances, which the Court considers to be fit. In the instant case, the

petitioner has sought parole on the ground that the marriage of his real brother is to be performed on 22.11.11 at Ambala preceded by a family function on 21.11.11 at Karnal and succeeded by marriage reception on 24.11.11 at Chandigarh. I do not agree with the contention of Mr. Jethmalani, the learned senior counsel, that the visit of the petitioner to the night club could not be construed as violative of the terms and conditions of the parole earlier. In the last parole order, it was specifically observed that his ordinary place of residence would be at Chandigarh although he was permitted to attend his neglected business and for that purpose he is alleged to have gone to his factory situated at Pattran, Punjab. To contend that most of the business is transacted at the nightclub and discotheques, which was not prohibited, is a submission, which I feel is unacceptable and unconvincing. There may not have been a negative restraint on the petitioner in the

previous parole order, but a condition, not to visit Delhi where he was found in a night club, which had almost resulted in a brawl was implicit in the condition that his ordinary place of residence was at Chandigarh. The petitioner was not supposed to be in Delhi at all much less in a nightclub on the previous occasions. Since there was a great deal of reporting about this matter in Press, the petitioner accordingly surrendered much before the expiry of the parole. I also do not agree with the contention of Mr.Jethmalani, learned senior counsel that there ought to be necessarily a negative covenant in the terms and conditions of the grant of parole that he shall not visit a particular place. Therefore, I do not accept this submission of the learned senior counsel justifying the deviation on the part of the petitioner but the learned senior counsel has rightly pointed out that since the respondent itself has framed guidelines under which the conduct of the petitioner while granting the

benefit of parole is to be seen only in the past one year, therefore, this deviation or delinquency on the part of the petitioner having taken place beyond a period of one year from the consideration of the present application in my considered opinion ought not to have weighed on the respondent and the respondent ought to have considered the application of the petitioner for parole de hors the said deviation. To that extent the order of the respondent is not sustainable. As the learned standing counsel for the State has very fairly conceded that they have no objection in case the parole is granted to the petitioner on the condition that he shall not visit any place other than Karnal and Ambala where the marriage functions are slated to be held, I feel that the matter does not deserve to be dealt with any further except that the order dated 21.10.11 is set aside and the petitioner is granted the benefit of parole for a period of five days,

i.e., from 21.11.11 to 25.11.11 (both days inclusive),
subject to the following conditions:

- (i) that the petitioner shall furnish with the Registrar (Appellate) of this Court a personal bond in the sum of Rs.50,000/- with one surety of the like amount.
- (ii) that he will maintain peace and good behaviour and comply with the terms and conditions of the grant of parole;
- (iii) that he shall be released preferably in the forenoon of 21.11.11 and he shall furnish his complete addresses of Chandigarh, Karnal and Ambala where he is going to stay as well as his telephone number to the Jail Superintendent, Central Jail, Tihar. He shall not travel beyond the jurisdiction of these districts.
- (iv) that he shall give his itinerary to the Jail Superintendent before his release on parole;
- (v) that he shall not commit any offence during the period of parole;

- (vi) that he shall not visit any nightclub and discotheque during the entire period of parole;
- (vii) that his release on parole for the above-mentioned period is valid till he becomes liable to be detained in some other case; and
- (viii) that he shall surrender before the Superintendent, Central Jail, Tihar on expiry of the period of parole.

9. With these directions, the writ petition stands disposed of.

10. DASTI.

11. A copy of this order be sent to the Jail Superintendent forthwith.

V.K. SHALI, J.

November 16, 2011
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