

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

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Date of decision: 6th May, 2015

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LPANo.220/2015

VIKAS YADAV

..... Appellant

Through: Mr. Sumeet Verma with Mr. Amit
Kala, Advs.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajesh Mahajan, ASC for State.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the orders dated 27th March, 2015 and 10th April, 2015 of the learned Single Judge of this Court in W.P.(Crl.) No.1644/2014 filed by the appellant. By the said writ petition, the appellant, convicted under Sections 302/364/201/34 IPC and sentenced to undergo life imprisonment/rigorous imprisonment for ten years and whose conviction has been upheld in appeal and sentence of life imprisonment though maintained has been made subject to a rider that he shall remain in incarceration for twenty five years without any remission, prayed for grant of parole for a period of three months on the grounds, (a) to meet his grandfather; (b) to file Special

Leave Petition (SLP) in the Supreme Court in consultation with some senior Advocate; and, (c) to maintain social ties.

2. The learned Single Judge, vide impugned order dated 27th March, 2015, considering the past conduct of the appellant, more particularly the fact that the complainant and witnesses had been provided police protection after assessing the threat perception and the aggressive nature of the appellant, held the appellant not entitled to blanket parole and granted custody parole to the appellant for a period of one week to meet his lawyers for preparation of SLP and also to meet his family members. Vide impugned order dated 10th April, 2015 the application of the appellant for extension/modification of the order dated 27th March, 2015 was dismissed.

3. This appeal has been filed seeking further period of three weeks of custody parole.

4. The appeal came up before us first on 17th April, 2015 when we drew the attention of the counsel for the appellant to the dicta of the Full Bench of this Court in *C.S. Agarwal Vs. State* 2011 (125) DRJ 241 and enquired as to how this appeal is maintainable. The counsel however contended that the Parole and Furlough Guidelines subsequently framed under the supervision of this Court

have made a difference. Accordingly the matter was adjourned to 20th April, 2015 when we heard the counsel for the appellant and the counsel for the State appearing on advance notice and reserved judgment.

5. The Full Bench of this Court in *C.S. Agarwal* supra was concerned with the maintainability of a Letters Patent Appeal against the order of the Single Judge of dismissal of a writ petition seeking quashing of FIR. It was held:-

- (A) that Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore which is applicable to the High Court of Delhi as well, clearly prohibits maintainability of an intra-court appeal if the impugned judgment is passed in exercise *inter alia* of criminal jurisdiction; the argument that the exercise of powers under Article 226 of the Constitution of India would never tantamount to exercising criminal jurisdiction, irrespective of the nature of the proceedings, was incorrect;
- (B) that if a petition under Article 226 relates to criminal proceedings, while dealing therewith, the Court would be exercising criminal jurisdiction; and,
- (C) in para 29 as under:-

“29. It would be necessary to clarify here that it cannot be said that in any of the cases under Article 226 of the Constitution, the Court is exercising ‘criminal jurisdiction’. It would depend upon the rights sought to be enforced and the nature of relief which the petitioner seeks in such proceedings. For example, if a writ petition seeking writ of habeas corpus is filed, while dealing with such a petition, the Court is not exercising criminal jurisdiction as no criminal proceedings are pending. In fact, the order of preventive detention is made without any trial under the criminal law. Likewise, when a person is convicted and sentenced after the conclusion of criminal trial and such an order of conviction has attained finality and he files writ petition under Article 226 of the Constitution challenging the orders of the Government refusing to grant parole while dealing with such a petition, the Single Judge is not exercising criminal jurisdiction, as no criminal proceedings are pending.

(emphasis added)”

6. We thus enquired from the counsel for the appellant as to how the appellant, according to whom himself the order of his conviction has not attained finality in as much as he wants to file a SLP to the Supreme Court, can say that the jurisdiction exercised by the learned Single Judge in his writ petition seeking parole, was not a criminal jurisdiction.

7. The counsel for the appellant stated that the Parole/Furlough Guidelines dated 17th February, 2010 themselves in Clause 9.7 provide for grant of parole to pursue the filing of a SLP before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction. It was argued that the Parole Guidelines having themselves recognized the right to seek parole for filing of a SLP, the jurisdiction exercised by the learned Single Judge in a writ petition for the said purpose, is not criminal. It is further argued that though the appellant has availed of one week's custody parole granted by the learned Single Judge but has in the said short time been unable to have the SLP prepared as the records of the case are voluminous and no counsel is available in the daytime for preparation of the SLP during which time the appellant had been granted parole. The counsel has also handed over a number of orders granting parole for the purpose of preparation of an SLP and has in the regard also referred to *Sunil Fulchand Shah Vs. Union of India* (2000) 3 SCC 409 holding that the action for grant of parole is generally speaking an administrative action.

8. We may at the outset notice that the Parole/Furlough Guidelines supra are of nearly a year prior to the judgment of the Full Bench in *C.S. Agarwal*

and though there is no mention of the said Guidelines in the judgment but there is also nothing to show that the notice thereof would have made any difference.

9. As far as the reliance by the appellant on the Guideline 9.7 expressly providing for grant of parole on the ground of pursuing the filing of a SLP is concerned, we do not find any conflict therein with ***C.S. Agarwal*** (supra). The same may remain a ground for grant of parole but if parole is sought on the ground of preparing and pursuing the filing of SLP, then in our opinion it cannot be said within the meaning of ***C.S. Agarwal*** that conviction and sentence have attained finality. Though a writ petition seeking parole on such ground would be maintainable but the jurisdiction exercised by the learned Single Judge in such a writ petition would be a criminal jurisdiction. On the contrary when the parole is sought on some other ground, after conviction and sentence have attained finality, then in accordance with ***C.S. Agarwal*** the jurisdiction exercised by the learned Single Judge would be a civil jurisdiction and an appeal would be maintainable. We therefore do not feel that any reconsideration of ***C.S. Agarwal*** is required.

10. Even otherwise, in the facts and circumstances of the case we do not find any error requiring interference in the discretion exercised by the learned Single Judge in refusing the three months parole sought and in granting only one week

of custody parole. The grant of parole is essentially a discretionary act though the discretion is to be guided by a number of facts. The settled principle of law is that in exercise of letters patent jurisdiction, the Division Bench would interfere with the discretion exercised by the learned Single Judge only if it is perverse and not to substitute its own view over that of the learned Single Judge. Reference in this regard can be made to the judgment of Division Bench of this Court in *Directorate of Education Vs. Action Committee Unaided Recognized Private Schools* MANU/DE/3275/2014. The learned Single Judge, in the impugned orders has given detailed/well founded reasons for granting only one week's custody parole and in which we see no perversity or illegality.

11. Thus on merits also we do not find any merit in the appeal which is dismissed.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 6, 2015

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