

\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1691/2015
ABHILASH KAUR Petitioner
Through: Mr. Vikas Pahwa, Sr. Adv. with
Mr.Sumit Arora, Adv.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. Rajesh Mahajan, ASC for the
State
Ms. Rajdipa Behura, SPP for CBI
with Ms. Sanskriti Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **02.09.2015**

The petitioner stood convicted by Trial Court in Complaint Case No.37/2010 and was sentenced for four years rigorous imprisonment and fine.

In appeal, the conviction was sustained but the sentence awarded by the Trial Court was modified and instead of four years of imprisonment, the petitioner was directed to suffer rigorous imprisonment for two years.

The SLP preferred by the petitioner was dismissed.

However, by order dated 3.8.2015 the Supreme Court gave the liberty to the convicts/petitioners in the SLPs to approach High Court in case of any physical ailment or urgent need of medical treatment.

It has been submitted on behalf of the petitioner that she has been advised total knee replacement and a date in the month of March, 2015 was fixed for the same. The petitioner could not be operated upon as she did not report and get herself admitted in hospital.

The petitioner, after the dismissal of her SLP, preferred a petition before the competent authority for being released on parole for her knee replacement. The aforesaid petition was not acted upon.

Hence, the present writ petition.

During the course of hearing of this writ petition, Mr. Mahajan, Additional Standing Counsel has submitted and has placed on record the order passed by the competent authority on 20.8.2015 whereby the prayer of the petitioner for being released on parole was rejected, the major ground for rejection being the petitioner not having served a minimum of one year imprisonment which is a condition pre-requisite according to the parole/furlough guidelines for being released on parole.

Mr. Pahwa, learned Senior Advocate, with reference to nominal roll, submits that the petitioner has been in jail for 9 months and 23 days. He further submits that if remission is to be counted, it would only be four days short of one year and therefore such an objection of the competent authority is not sustainable.

The status report affirms the fact that the petitioner requires to be operated upon. However, the tentative date of the operation, according to Mr. Mahajan, has not yet been scheduled.

Let it be noted that the petitioner was permitted to add CBI as a party respondent and was also directed to furnish an amended memo of parties. Notice was issued to CBI. Pursuant to such a notice, Ms. Rajdipa Behura, SPP has appeared and has submitted that the parole, custody and jail affairs are State subjects. After the investigation of the case, the CBI becomes functus officio, and therefore it would not be in a position to comment upon or provide any assistance to Court with respect to grant of parole after the hierarchy of Courts have closed their doors on the face of the petition.

Taking into account the fact that the petitioner has remained in jail for about a year and is in urgent need of knee replacement, this Court is inclined to release the petitioner on parole.

Let the petitioner be released on parole for a period of 30 days from the date of her release, coinciding with the date of her operation, on furnishing a bond in the sum of Rs.25,000/- with two sureties of like amount, one such surety to be the husband of the petitioner, to the satisfaction of the Trial Court.

After being released on parole, the petitioner through her agency would contact her doctor or the hospital where she intends to get herself operated and would have a tentative date fixed. The petitioner would immediately intimate the SHO of the concerned Police Station about such date on which she would be operated upon.

The petitioner would be well advised, before furnishing bond for her release, to have it confirmed from the concerned hospital administration about the expected date of the operation and would furnish bonds only when the

period of 30 days coincides with the scheduled date of the operation.

This Court does take notice of the fact that no specific date of operation could be given without getting clearance from various other departments of the hospital. All these aspects would be taken into account by the petitioner while deciding about the time of furnishing of bond for being released on parole.

The petitioner would surrender before the jail authorities immediately and on or before the expiry of the period of the parole.

With such observations, the petition is disposed of.

Dasti.

ASHUTOSH KUMAR, J

SEPTEMBER 02, 2015

ns