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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12.02.2016

W.P.(CRL) 475/2016

PHOOLWATI

..... Petitioner

Through: Ms. Aekta Vats, Advocate with Mr.
Himanshu Pal, Advocate

versus

STATE

..... Respondent

Through: Mr. Rajesh Mahajan, ASC (Criminal)
with Ms. Parul Jamwal, Advocate and
SI Karamvir, PS- Narela

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 of the Constitution of India praying for a direction to the official respondent to release the petitioner on parole in order to enable him to institute an SLP before the Hon'ble Supreme Court of India.

2. The petitioner is aggrieved by the order dated 13.01.2016 whereby her representation for parole on the above ground was rejected by the competent authority for the following reasons:-

- “(i) The convict is not entitled for parole in view of Para 11.1 of Parole/Furlough Guidelines: 2010 which provides that “a convict must have served at least one year in prison excluding any period covered by remission.” The convict has served only 10 month & 23 days incarceration after conviction.
- (ii) Adverse police report which states that there is possibility of convict to disturb the law & order in the society. There may be threat to the victim party/witnesses. The possibility of committing similar offence and jumping the parole cannot be ruled out. The grounds are not seems to be genuine.

The convict, if desires so, he can file SLP from the jail itself, where free legal aid is available to the convicts.”

3. The reasons stated by the Competent Authority in the order impugned in the present petition cannot be sustained. Insofar as Para 11.2 of Parole/Furlough Guidelines: 2010 are concerned, the same are merely guidelines and cannot be applied blindly in every case.

4. In the present case, a perusal of the nominal roll reveals qua the petitioner reveals that she has already undergone almost seven years’ incarceration out of the total sentence of ten years awarded to her. Is she expected to serve out her entire sentence before she is enlarged on parole?

Insofar as, the other reason for which the representation has been dismissed, the same are without any cogent material and are consequently not genuine. The nominal roll further reveals that the jail conduct of the petitioner has been satisfactory from the very inception of her incarceration.

5. The petitioner wants to prefer an SLP against the judgment dated 12.10.2015 passed by this Court whereby the appeal filed by her against her conviction and sentence by the trial court was dismissed.

6. It is trite to say that there are number of judicial pronouncements in which it has been held that it is the constitutional right of every convict to be released on parole in order to prosecute proceedings before a higher court.

7. In view of the foregoing, I see no impediment in granting parole to the petitioner. The petitioner is directed to be released on parole for a period of four weeks from the date of her release subject to her furnishing a personal bond in the sum of Rs.5,000/- (Rupees Five Thousand Only) with one surety of the like amount to the satisfaction of the Superintendent, Central Jail, Tihar subject to the following conditions:-

- (i) The petitioner shall provide the Superintendent, Central Jail, Tihar with her mobile telephone number which she undertakes to keep operational.

- (ii) The petitioner shall not leave the National Capital Territory of Delhi during the period of parole, without the prior permission of this Court.
- (iii) The petitioner is directed to surrender before the jail authorities at the expiry of the period of parole.

8. The writ petition is allowed and disposed of accordingly.

9. A copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary compliance and communication of the same to the petitioner.

SIDDHARTH MRIDUL, J

FEBRUARY 12, 2016

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