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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: May 16, 2016
Judgment Pronounced on: May 27, 2016

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+ LPA 309/2016

AJAY SINGH CHAUTALA

..... Appellant

Through: Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Amit Sahni and Mr.Dhruv Sheoran,
Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Rahul Mehra, Sr.Standing
Counsel with Mr. Aditya Swarup Agarwal,
Advocate for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

CM No. 18451/2015 (exemption)

Allowed subject to all just exceptions.

LPA 309/2016

1. By the present appeal, the appellant seeks to impugn the order dated 27.04.2016 of the learned Single Judge by which order the writ petition of the appellant was dismissed and his request for release on parole was declined.
2. The appellant was convicted vide judgment of conviction dated 16.01.2013 and the order on sentence dated 22.01.2013, passed by the trial

court in the case titled '*CBI v. Vidyadhar & Ors.*', for offences punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and under Section 120-B read with Sections 418/467/471 IPC. The appellant has been sentenced to undergo R.I. for 10 years and a fine in the sum of Rs.1000.00 and in default of payment of fine, to further undergo S.I. for 6 months.

3. The appeals filed by the appellant before this Court and the Supreme Court were also dismissed upholding the sentence imposed by the trial court on 05.03.2015 and 03.08.2015, respectively.

4. The appellant applied for parole through his son-Shri Dushyant Chautala vide application dated 02.09.2015. The application relied upon three different medical reports dated 01.08.2013, 14.01.2015 and 19.08.2015 of respective Medical Boards of All India Institute of Medical Sciences to support his contention for grant of parole for a period of four months considering his medical condition and also to maintain social ties. The respondent vide communication dated 16.11.2015 declined the application on the ground that the appellant had undergone one year and two months of imprisonment out of which the last seven months i.e. from 05.03.2015, he had been admitted to Medanta, Medicity Hospital, Gurgaon. An additional ground for rejection was that the appellant had been on interim bail from 13.08.2013 to 03.03.2015.

5. The appellant thereafter filed a writ petition before this court seeking to impugn the said communication dated 16.11.2015 of the respondent declining his request for parole. During the pendency of the said petition, the appellant moved an application being CrI. M.A. 950/2016 putting forward additional grounds/circumstances for grant of parole i.e. two marriages in

the family. The learned Single Judge rejected the application of the appellant on 1.2.2016 pointing out that the request was contrary to the Parole/Furlough guidelines 2010 issued by the respondent. Against the said order of the learned Single Judge, the appellant filed an appeal being LPA No. 87/2016 that was dismissed by this court on 15.02.2016. However, the main writ petition seeking to impugn the order of the respondent dated 16.11.2015 remained pending.

6. The learned Single Judge has now dismissed the writ petition noting that the impugned order of the respondent dated 16.11.2015 had noted that out of the period of one year and two months spent in custody, the appellant had been in Medanta, Medicity Hospital, Gurgaon for seven months. It also noted the submission of the learned counsel for the respondent that on the date when the respondent passed the impugned order, the facts of that time were taken into account and that if there exists any fresh ground for release on parole of the appellant now, he can apply to the competent authority again. The impugned order also noted that the appellant had spent seven months in Medanta, Medicity Hospital, Gurgaon whereas the medical records placed on record by the appellant do not disclose any such ailments which necessitated his hospitalization for seven months at a stretch in the said hospital. The court noted that there is no material illegality or perversity in the order dated 16.11.2015 passed by the respondent and dismissed the writ petition.

7. Learned senior counsel for the appellant has relied heavily on the medical reports of the appellant which have been prepared by the Medical Boards of AIIMS dated 01.08.2013, 14.01.2015 and 19.08.2015 to contend that there is no basis on which the request for parole can be denied to the

appellant as he is in need of hospitalization. He has taken us through the conclusions recorded by the Medical Boards of AIIMS to stress that there is a medical requirement for grant of parole.

8. Learned Standing Counsel for the respondent has however contended that the appellant is not suffering from any ailment which would require urgent hospitalization and hence, the reliance on the medical reports is entirely misplaced. He has further submitted that the impugned order of the respondent dated 16.11.2015 was passed in the facts and circumstances that existed on that date and that the appellant is free to move a fresh application before the competent authority for parole based on the current facts and circumstances.

9. A perusal of the medical reports of the different Medical Boards of AIIMS shows that these Medical Boards have been constituted on the directions of the court. The report dated 01.08.2013 was prepared by the Board which was constituted on the order of the learned Single Judge dated 26.07.2013 in CrI. Appeal No. 334/2013, the report dated 14.01.2015 was prepared by the Board constituted in compliance of the order dated 19.12.2014 of the learned Single Judge of this court in CrI.M.A.No. 5747/2014 in CrI. A.No.334/2013 and the report dated 19.08.2015 was made pursuant to the Board constituted vide order dated 06.08.2015 of the Court of Additional Sessions Judge, CBI in the case titled as “*CBI vs. Ajay Singh Chautala*”. The appellants have failed to place on record the orders on the basis of which the Medical Boards were constituted and the subsequent orders that the respective courts passed pursuant to receipt of the said reports from the said Boards. We also cannot help noticing that as per the impugned order dated 16.11.2015 of the respondent, the appellant had been admitted in

Medanta, Medicity Hospital, Gurgaon for seven months from 05.03.2015 i.e. presumably up to sometime in October, 2015. Earlier he was on interim bail from 13.08.2013 to 03.03.2015. In the absence of any detailed facts given by the appellant, it appears that the three Boards have been constituted in compliance of orders dated 26.07.2013, 19.12.2014 and 06.08.2015, respectively when either the appellant was on interim bail or was admitted in Medanta, Medicity Hospital, Gurgaon. There is no report after October 2015 i.e. since the discharge of the appellant from Medanta, Medicity Hospital, Gurgaon.

10. The legal position regarding interference by this Court in the action of the executive in grant of parole was noted by a Division Bench of this Court in *Crl. Writ Appeal No.575/1995 titled Shakuntala Devi vs. State/MANU/DE/1002/1995* as follows:-

“7 It is well settled that Article 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment. The Apex Court has observed in *E.P. Royappa vs. State of T.N. : (1974) ILLJ 172 SC*, "from a positive point of view, equality is antithetic to arbitrariness. Any administrative action that is arbitrary must involve the negation of equality. (*A.L. Kalra vs.. P & E Corporation of India Ltd. : (1984) II LLJ 186 SC*). No doubt, the grant of parole is essentially an executive function. If the Court finds that any Governmental action in rejecting the grant of parole to a prisoner has the effect of suffocating the Article 14 or Article 21 of the Constitution, then the court must act, will act to restore the rule of law and respect the residuary fundamental rights of an aggrieved prisoner.”

11. In the light of the facts above, we agree with the view of the learned Single Judge that there is no gross illegality or perversity in the impugned order dated 16.11.2015 passed by the State declining parole to the appellant.

Hence, we dismiss the present appeal.

12. Needles to add that the appellant is free to make a fresh application for parole based on the present factual scenario to the competent authority who shall consider the same expeditiously in any case within four weeks from the receipt of such an application, in case any is made.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

MAY 27, 2016
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