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

+ LPA 493/2016

RAJESH

..... Appellant

Through: Mr. Aditya Vikram, Adv. (DHCLSC)

Versus

STATE

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Rajesh Mahajan, ASC (Crl.) for
State.

SI Tinku Shokeen, P.S. Punjabi Bagh.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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18.10.2016

CM No.32604/2016 (*delay of 225 days*)

For the reasons stated in the application, delay in filing the appeal is condoned.

The application stands disposed of.

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1. This appeal is directed against the order of the learned Single Judge dated 24.11.2015 in W.P.(Crl.) No.1859/2015. The writ petitioner is the appellant before us.
2. The request of the appellant/writ petitioner, who is undergoing sentence for committing an offence punishable under NDPS Act, for release on parole for the purpose of getting the marriage of his daughter fixed was rejected by the Competent Authority by order dated 28.07.2015. Aggrieved by the same, he filed W.P.(Crl.) No.1859/2015. The said writ petition was

disposed of by the learned Single Judge by order dated 24.11.2015 with the following directions:

"Let the petitioner be released on parole for a period of 30 days from the date of his release subject to the petitioner furnishing a bond in the sum of Rs.10,000/- with two sureties of like amount, one such surety shall be the brother of the petitioner to the satisfaction of the Trial Court, subject to the following conditions:-

- a) The petitioner shall surrender before the jail authorities on or before the expiry of the said period of parole.
- b) The petitioner shall not engage himself in any unlawful activity.
- c) If the petitioner is required to go out of the territory of Delhi, he would intimate about his visit to the SHO of the concerned police station.
- d) He shall furnish his mobile telephone number and the mobile telephone number of both the sureties to the SHO of the concerned police station so that in case of necessity he could be tracked and his whereabouts could be ascertained.

In case, the petitioner flouts any one of the conditions, an application could be moved by the SHO for cancellation of his parole and for taking of the coercive steps for securing his attendance."

3. The appellant/petitioner thereafter filed CrI.M.A. No.2301/2016 for reduction of number of sureties from two to one and not to insist that one of the sureties shall be a family member stating that both his brothers stay elsewhere and they do not support him. The said application was dismissed by the learned Single Judge by order dated 09.02.2016. Hence, the present appeal.

4. We have heard Shri Aditya Vikram, the learned Advocate nominated by the Delhi High Court Legal Services Committee appearing for the appellant who is undergoing sentence in Tihar Jail. We have also heard Shri Rahul Mehra, the learned Senior Standing Counsel for Government of NCT of Delhi.

5. The material available on record shows that the appellant was earlier released on parole twice in the year 2013 and 2015 and on both the occasions after completion of the period of parole he surrendered before the Jail authorities on time and there was no complaint of misusing the liberty during the period of parole. It is also pleaded in the appeal that he was on regular bail throughout the trial of the case on furnishing one surety and all-through he maintained good conduct. It is further pleaded that one of his close friends by name Mr. Rohtash alias Sanjay, a permanent resident of Delhi had earlier stood as a surety for the appellant and that now also he is ready and willing to give the surety.

6. Though the facts pleaded by the appellant are not disputed by the learned Senior Standing Counsel appearing for GNCTD, an objection has been raised as to the maintainability of the appeal under the Letters Patent.

7. It was explained by a Full Bench of this Court in ***C.S. Agarwal v. State; (2011) 125 DRJ 241*** that 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.

8. In the case on hand, it is not disputed before us that the order of conviction of the appellant has attained finality. Since no criminal proceedings are pending, the jurisdiction exercised by the learned Single Judge in the writ petition relating to grant of parole to the appellant was not a criminal jurisdiction. Hence, in our considered opinion, a Letters Patent Appeal is maintainable.

9. For the aforesaid reasons and in the facts and circumstances noticed above, we consider it appropriate to modify the order of the learned Single Judge by reducing the number of sureties to one. The condition that one of the sureties shall be the brother of the writ petitioner shall also stand deleted.

10. The appeal is accordingly disposed of with a direction to release the appellant/writ petitioner on parole for a period of thirty days from the date of his release subject to the appellant furnishing a bond in the sum of Rs.10,000/- with one surety of like amount to the satisfaction of the trial court. We make it clear that the conditions (a) to (d) specified by the learned Single Judge in the order under appeal dated 24.11.2015 shall apply and in case the appellant flouts any one of the said conditions the SHO is at liberty to move an application for cancellation of his parole and for taking steps for securing his attendance.

11. The order under appeal dated 24.11.2015 in W.P.(CrI.) No.1859/2015 shall stand modified to the abovesaid extent.

12. The appeal is accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

OCTOBER 18, 2016/kks

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