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

+ W.P.(CRL) 183/2017

VIJAY @ RAJESH

..... Petitioner

Through: Ms. Neha Kapoor, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Rajesh Mahajan, ASC with Mr.
Peeyush Bhatia, Adv for State

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.02.2017

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1. The petitioner has preferred the present writ petition to seek parole for a period of 3 months on the ground that the petitioner's mother has to undergo a spine surgery. The nominal roll on record shows that the petitioner is undergoing a life sentence in case FIR 62/2002 under Section 302/392/34 IPC registered at PS Anand Parbat. His criminal appeal was dismissed by this court on 18.12.2015. As on 23.01.2017, the petitioner has undergone 12 years 6 months and 2 days incarceration. The nominal roll further shows that the jail conduct of the petitioner was found to be satisfactory for the last one year.
2. Pertinently, it was disclosed from the same nominal roll that while the petitioner was on furlough granted by the DG (P) between 11.08.2016 and 25.08.2016 and he was scheduled to surrender on 26.08.2016, he was arrested in another case i.e. case FIR 594/2016 under Section 307/353/186

IPC registered at PS Begampur on 21.08.2016. I may also observe that two earlier cases in which the petitioner is involved and on bail are also pending, which are:

- a) FIR No.379/2004 under Section 323/252/ 120B/34 IPC, PS Defence Colony;
- b) FIR No.312/2008 under Section 392/395/412 IPC, PS Vikas Puri.

3. In view of the aforesaid, it was put to learned counsel for the petitioner on 25.01.2017 that the petitioner had apparently misused the liberty granted to him by releasing him on furlough since he was found to be involved in another heinous crime and arrested in that case. Learned counsel for the petitioner has argued that the petitioner was granted bail by the learned ASJ in the said case on 21.08.2016. A copy of that order has been placed on record along with the petition.

4. The said order has been perused and the only ground on which the petitioner was granted bail was that the investigation was complete and, consequently, the petitioner could not be kept in custody during the trial. The order does not disclose any discussion or application of mind by the learned ASJ on the aspect whether a prima facie case is made out against the petitioner and on the scope of his involvement. Consequently, this court had required that the copy of the charge sheet be placed on record. Learned counsel for the petitioner has tendered in court the said charge sheet.

5. Mr. Mahajan has read out the rukka recorded in the case on 21.08.2016. What transpires therefrom is that an information was received

that 4-5 bad characters are planning to commit dacoity at the office of a property dealer, since a high value cash transaction was slated to be undertaken in his office. Consequently, a raiding party was constituted and the vehicle in which the said persons were travelling was confronted and the police party was fired upon by the occupants of I-20 car. In that process, HC Satyawar had fired so as to protect the police party and the bullet had hit the petitioner and the petitioner's firearm in his hand had dropped. The bullet had hit the petitioner and he was apprehended at the spot and admitted to Safdarjung Hospital.

6. The submission of learned counsel for the petitioner is that the petitioner's sister after getting information from the petitioner has already lodged a complaint with the Commissioner of Police on 14.09.2016 that the petitioner has been falsely implicated in the said case by the police. She also complained that the petitioner was asked by one police official Pradeep from PS Sultanpuri, who had come in civil dress with his co-officials, to accompany them to the police station for some talk. The petitioner had accompanied the said police personnel and the police took him to Sector 24, Rohini, where Pradeep had fired a gunshot on the petitioner on his mouth and the same went through his other cheek. The petitioner became unconscious and regained conscious on the next day at the hospital and was totally unaware of the case in which he had been implicated. Only subsequently, he learnt about him being roped in case FIR 594/2016 registered at PS Begampur. The petitioner's sister claimed that she learnt of this development on 12.09.2016 and consequently made a complaint to the Commissioner of Police on 14.09.2016.

7. Learned counsel for the petitioner submits that this complaint of the petitioner has not been actioned till date. The further submission is that merely because the petitioner is claimed to be involved in case FIR 594/2016, it does not follow that he is guilty of the said offence and the involvement of the petitioner in the said case does not lead to the conclusion that the petitioner has abused the liberty granted to the petitioner by releasing him on furlough.

8. Having heard learned counsels, I am not inclined to grant parole to the petitioner. If the submission of the petitioner were to be accepted that mere involvement in a case by the convict on parole/ furlough cannot be a ground to deny further parole/ furlough, it would mean that the convict may freely indulge in criminal activity; get involved in cases and yet assert his right to seek parole/ furlough under the guidelines on the basis of good conduct while in jail. Such cannot be the interpretation to be given to the guidelines in this kind of situation. It would have to be seen from case to case as to whether the implication of convict in a case while he is on parole/ furlough is prima facie made out or not, and whether it appears to be a case of false implication as claimed by the petitioner.

9. In the present case, the petitioner claims that he has been falsely implicated in case FIR 594/2016. He claims that he had gone to Rohini to meet someone at majar in sector-22, Rohini. However, he does not state as to whom he had gone to meet and for what purpose. He claimed that one police official Pradeep from PS Sultanpuri and his co-officials in civil dress had asked him and his brother to come along with them to the police station to talk and that Pradeep had fired upon the petitioner. It is not disclosed as

to what earlier connection the petitioner had with the said police official called Pradeep. The identity of the said police officer Pradeep is not even established on a reading of the said complaint, since only his first name is given and his designation is also not disclosed. As to how the petitioner claims to have learnt the name of the police personnel as Pradeep is also not disclosed. The motive behind the so-called Pradeep firing gunshot at the petitioner has not been stated.

10. Thus, prima facie, the allegation with regard to false implication does not impress this court. The fact of the matter is that the petitioner received gunshot and he was injured. He was apprehended at the spot and his name is clearly recorded in the rukka itself.

11. In these circumstances, it cannot be accepted at this stage that the involvement of the petitioner in case FIR 594/2016 is fabricated by the police. Since the petitioner appears to be involved in a serious offence while he was on furlough, he is obviously not entitled to parole. The petition is, accordingly, dismissed.

12. It is made clear that the observations made by this court in relation to case FIR 594/2016 and in relation to the petitioner's application alleging false implication is only prima facie, and shall have no bearing in relation to those proceedings in future.

VIPIN SANGHI, J

FEBRUARY 08, 2017

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