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

+ **W.P.(CRL) 3719/2016**

OM PRAKASH CHAUTALA

..... Petitioner

Through: Mr. Amit Sahni, Mr. Dhruv Sheoran
& Mr. Vaibhav Sharma, Advocates.

versus

THE STATE (NT OF DELHI)

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
and Mr. Jamal Akhtar, Advocate
along with Mr. Sanjay Gupta, Dy.
Supdt. Central Jail No.2, Tihar, for
the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

01.03.2017

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1. The petitioner was directed to be released on parole for a period of three weeks subject to terms vide order dated 06.02.2017 and the present petition was disposed of.

2. The petitioner had preferred this petition to assail the rejection of the parole application of the petitioner by the State vide order dated 14.12.2016 and to seek parole. The petitioner sought parole primarily on medical grounds. The averments made by the petitioner with regard to his medical condition are found in paragraphs 3 and 11, which read as follows:

“3. That the petitioner is polio affected since birth and has permanent disability of 60 %. The Medical certificate issued by the Ram Manohar Lohiya Government Hospital is annexed herewith. It is pertinent to mention here that the petitioner was operated upon his deformity of legs by the Post Graduate Institute, Chandigarh in the year 2005 and presently the petitioner is facing acute pain and extreme hardship in daily chores.

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11. That it is quite pertinent to mention here that the Petitioner’s health conditions were deteriorating in Jail and therefore a Writ Petition (Criminal) No 2151/2016 was filed before the Hon’ble High Court of Delhi for seeking treatment at the cost of the petitioner and only after filing of the said petition, the petitioner was later shifted to AIIMS, New Delhi for the purpose of treatment. The Petitioner has recently been admitted to AIIMS, New Delhi for the purpose of his treatment. The aforesaid petition is still pending adjudication and final determination and the next date of hearing is 21-12-2016.”

3. The petitioner had also placed reliance on the observations made by the Supreme Court in the order dated 03.08.2015 while dismissing his Special Leave Petition against his conviction and sentence. The said observations read as follows:

“ We are not inclined to entertain any of these petitions, all are dismissed.

Whosoever has got any physical ailment or needs medical treatment, they are always at liberty to move the High Court and seek for appropriate directions.”

4. The impugned order dated 14.12.2016 also discloses that the petitioner had applied for parole before the competent authority on medical grounds. The relevant part of the said order reads as follows:

“I am directed to inform you that the request in respect of convict for grant of parole on the grounds “for self treatment as the applicant is suffering different types of old age deceases since long time and presently he is admitted in AIIMS since last month” has been considered by the competent authority in the matter & rejected in view of adverse CBI report which states that accused in this case including Sh. Om Prakash Chautala had obtained an interim bail during hearing of Crl. Appeal No. 213/2013 in Delhi High Court and got extended the same on various medical grounds. However, it was found that Sh. Om Prakash Chautala was misusing the bail and attended public meetings in various Districts of Haryana. Therefore, his interim bail was cancelled by DHC on an application made by CBI vide order dated 10.10.2014.

Further, as per nominal roll, the convict has last availed 03 weeks I/ Bail upto 23.06.2014 by DHC, which was further extended from time to time by DHC till 11.10.2014. The convict has last availed 04 weeks parole upto 07.03.2016 by DHC. One case No. CBI/02/2012/RC No.CBI/ACU-VII/2(A)/2006 (on bail)is also pending against the convict. One of his co-accused Sher Singh S/o Karta Ram has not been surrendered.”

5. Thus, it would be seen that the parole application of the petitioner was rejected by the State on account of the fact that on an earlier occasion, when he had been released on interim bail (while his Criminal Appeal No.213/2013 was being heard by this Court) on medical grounds, the petitioner was found to be misusing the same by attending public meetings in various districts of Haryana. Consequently, this Court had cancelled his interim bail vide order dated 10.10.2014.

6. The grant of parole to the petitioner was opposed by the State. It had been pointed out by Mr. Mehra, learned Standing Counsel representing the State that the past conduct of the petitioner does not speak well for him. He

also pointed out the previous misuse of interim bail granted to the petitioner. Mr. Mehra had also pointed out that between 19.01.2013 to the date of passing of the said order dated 06.02.2017, the petitioner had been out of the jail and was at one or the other hospital for a total of 523 days. If the period of 76 days during which the petitioner had been on parole were to be included, the same would add up to 599 days out of the approximately 1190 days from the date of his conviction. Mr. Mehra pointed out that the petitioner had successfully evaded imprisonment in the jail for nearly half of the period. Despite the aforesaid position, this Court had granted parole to the petitioner on medical grounds, as projected by the petitioner before this Court. This Court observed that merely because the petitioner had spent nearly 50% of the time in hospitals, cannot per se be taken as proof of misuse of the facility by the petitioner.

7. After this petition was disposed of, this Court received a complaint from one Mr. Om Prakash with regard to misuse of parole by the petitioner. Along with this complaint dated 19.02.2017, the complainant also annexed four press reports to show that the petitioner was found to be addressing public meetings. These reports are of 13.02.2017, 13.02.2017, 18.02.2017 & 21.02.2017.

8. In view of the aforesaid, the matter was directed to be listed before the Court after giving notice to learned counsel for the petitioner and the learned Standing Counsel vide order dated 25.02.2017. Accordingly, the matter was listed before the Court on 27.02.2017, when the complaint made by Mr. Om Prakash along with its attachments were directed to be provided to the learned counsel. They were so provided and the matter has been heard

today.

9. The submission of learned counsel for the petitioner is that the press reports annexed with the complaint of Mr. Om Prakash do not disclose the allegation that the petitioner has been holding public meetings. He submits that the petitioner is a political person having remained Chief Minister of the State of Haryana and he is visited by a large number of persons everyday at his residence.

10. I cannot accept this submission for the reason that the press reports show that the petitioner has been attending public meetings at different places in the State of Haryana. The report dated 13.02.2017 published in Dainik Tribune is from Jhajjar; the report dated 13.02.2017 published in Dainik Bhaskar is from Rohtak; the report dated 18.02.2017 published in Amar Ujala is from Hisar; and the report dated 21.02.2017 published in Dainik Tribune is from Sonapat.

11. The petitioner had sought parole purely on medical grounds. This is evident from the impugned order, as extracted above, and also from the averments made in the present petition, which too have been extracted above. The application for parole was rejected by the State by taking note of his previous similar conduct, namely of his attending political meetings and gatherings while on interim bail on medical grounds.

12. Even though the learned Standing Counsel vehemently opposed grant of parole in the present case, as extracted hereinabove, this Court considering the age of the petitioner granted him parole by believing his claim that he is suffering from ailments and needs parole to be able to

receive treatment privately. The petitioner is, however, once again found to be indulging in political activities while on parole and a perusal of the photographs published in the daily newspapers filed along with the complaint of Mr. Om Prakash show that he is hail & hearty and attending public meetings all over the State of Haryana from time to time. It appears that the petitioner has once again resorted to the same modus operandi and his conduct is incorrigible. The petitioner has clearly breached the trust that this Court reposed in him by believing his assertion that he is in urgent need of medical attention.

13. Mr. Mehra has drawn the attention of the Court to Guideline No.37 of the Parole/ Furlough: Guidelines – 2010, which provides that “*The period of parole/ furlough will count as sentence undergone unless the prisoner commits an offence during the period he is released on furlough/parole in which event the period will not be counted as sentence undergone*”. In the present case, as noticed hereinabove, the petitioner has remained out of prison for nearly half his term.

14. At this stage, learned counsel for the petitioner states that the data furnished by the State, as recorded in the order dated 06.02.2017, is not correct.

15. In any event, the nominal roll on record shows that the petitioner was granted interim bail for a period of six weeks on 22.05.2013, which was further extended from time to time till 23.09.2013. Similarly, he was granted interim bail on 03.06.2014 for a period of three weeks till 23.06.2014 and the same was extended by this Court till 11.10.2014. The

aforesaid clearly shows the propensity of the petitioner to seek extension of his liberty once granted by the Court by playing his old age & medical condition card.

16. The Parole/ Furlough: Guidelines – 2010 are non-statutory and they have been framed in the spirit of providing succour to convicts who are incarcerated for long periods. They cannot be enforced as letter of law, and certainly not, in respect of a convict who is found to have misused the liberty granted to him by misleading the Court.

17. The parole granted to the petitioner is, therefore, cancelled and he is directed to surrender forthwith. The period already spent by him on parole as granted vide order dated 06.02.2017 till the date of his surrender shall not count towards the sentence undergone by the petitioner.

18. In view of the aforesaid, the furlough granted by the DG (Prisons) to the petitioner for a period of three weeks also stands cancelled.

19. This order be communicated to the DG (Prisons).

20. Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

MARCH 01, 2017

B.S. Rohella