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

+ W.P.(CRL.) 874/2020

ASHRAF KHAN

.....Applicant/Petitioner

Through : Mr. Krishan Kumar, Advocate

versus

STATE

..... Respondent

Through : Ms. Nandita Rao, ASC for
State

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.06.2020

The petitioner, who is a convict in case arising from FIR No. 120/2011 registered under section 21(c) of Narcotic Drugs and Psychotropic Substances Act 1985 at PS : Crime and Railways, Delhi, seeks parole on the ground of the prevailing COVID-19 pandemic.

2. Mr. Krishan Kumar, learned counsel appearing for the petitioner states that by judgment dated 07.12.2012 the petitioner was convicted for the offence punishable under section 21(c) of the NDPS Act; and *vidé* sentencing order dated 16.12.2012 he was awarded rigorous imprisonment of 10 years with fine of Rs.1,00,000/- and a default sentence of simple imprisonment of 02 years.

3. The criminal appeal against the judgment of conviction and sentencing order, as also the special leave petition, have both been dismissed. Counsel further points-out that the petitioner has already served about 09 years of incarceration out of the 10-year sentence

awarded to him. It is also urged that the petitioner has been granted parole on 05 earlier occasions.

4. Mr. Krishan Kumar fairly concedes that due to lack of complete instructions and coordination in the present matter due to lockdown, certain statements have come to be made in the writ petition which are not accurate; and prays that these be excused in the present circumstances.

5. Ms. Nandita Rao, learned Additional Standing Counsel appearing for the State has filed status report dated 11.06.2020.

6. The petitioner's updated nominal roll dated 05.06.2020 has also been received from the Jail Superintendent.

7. The status report records that the petitioner's address in Bareilly, U.P. has been verified. It has also been verified that the petitioner's aged father resides at that address.

8. The nominal roll shows that the petitioner was granted parole on 05 occasions between 2014 and 2018; and on 02 occasions, namely in 2016 and 2018-2019, he surrendered late by 18 days and 42 days respectively. For such late surrender, the petitioner was awarded punishments dated 19.12.2016 and 04.03.2019. However, it is not the case that the petitioner failed to surrender or that he had to be arrested and brought back.

9. Ms. Nandita Rao points-out that as per Rule 1210 of the Delhi Prison Rules 2018, for a prisoner to be eligible for release on parole, if a prisoner has been awarded major punishment for a prison offence, his conduct should have been uniformly good for 02 years from the date of the last punishment. Ms. Rao contends that that condition is

not met in the present case since the petitioner had surrendered late on 02 occasions, the last being in March 2019 i.e. less than 02 years ago.

10. Mr. Krishan Kumar contends that insofar as the late surrender is concerned, the petitioner has returned voluntarily each time; has already been punished for such omissions; and has therefore atoned for them.

11. On a conspectus of the aforesaid circumstances, what weighs with the court is that the petitioner has been granted parole on 05 occasions and each time he has surrendered, although he was late in surrendering on 02 occasions. However, each time the petitioner has surrendered himself and has never been required to be arrested and brought back to prison. Moreover, the petitioner has already served almost his entire sentence with only about 01 year of imprisonment remaining out of the 10-year sentence awarded to him, aside from the default sentence of course.

12. Furthermore, it is also the policy of the courts in view of the prevailing COVID-19 pandemic, which has been spreading, with more cases being reported each day from prison, to decongest prisons and to grant relief to prisoners wherever justified, so as not to expose prisoners to unwarranted health risk.

13. In view of the foregoing considerations, this court is persuaded to grant to the petitioner parole for a period of 04 weeks from the date of his release, subject to the following conditions :

- a. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- to the satisfaction of the Jail Superintendent. The requirement of furnishing surety as a condition of parole is dispensed with at this stage ;

- b. The petitioner shall not leave the District of Bareilly, U.P. without permission of the court and shall *ordinarily* reside at the address mentioned in the status report;
 - c. The petitioner shall report every Saturday between 11 am and 11:30 am to the SHO, PS : Meerganj, District Bareilly, U.P. to mark his presence. The petitioner shall not be kept waiting for longer than 01 hour at the police station during such visits ;
 - d. The petitioner shall furnish to the SHO a cell phone number on which the petitioner may be contacted and shall ensure that the number is kept active and switched-on at all times;
 - e. If the petitioner has a passport, he shall also surrender the same to the Jail Superintendent;
 - f. Upon expiry of the period of parole, the petitioner shall surrender *in time* before the concerned Jail Superintendent.
14. A copy of the order be sent to the Jail Superintendent.
15. The writ petition is disposed of in the above terms.

ANUP JAIRAM BHAMBHANI, J.

JUNE 16, 2020

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