

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

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Date of decision: June 18, 2020

+ **W.P.(CRL.) 881/2020**

VISHAL YADAV

..... Petitioner

Through: Ms. Narita Yadav, Adv.

Versus

THE STATE & ORS.

..... Respondents

Through: Mr. Rajesh Mahajan, Adv. for  
R-1  
Mr. P.K. Dey, Adv. for R-2  
Mr. Ajay Katara, R-3 in  
person.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

This matter is being heard through video-conferencing.

1. The present petition has been filed with the following prayers:-

*“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to issue an appropriate writ / order(s) and / or direction(s) and thereby:*

*(a) Quash the order dated 16.05.2020 passed by the Respondent No.1 and direct Respondent No.1 to immediately temporarily release of the Petitioner for a period of eight (8) weeks from Tihar Jail or for a period as deemed fit and proper by this Hon’ble Court:*

*(b) pass any other order(s) which this Court may deem fit and proper in the interest of justice and the general public of NCT of Delhi.”*

2. The petitioner has filed the instant petition challenging the order dated May 16, 2020 passed by the respondent No.1 rejecting the representation of the petitioner for grant of parole for a period of eight weeks. The primary ground seeking emergency parole is, the outbreak of COVID-19.

3. Some of the facts relevant are, on February 17, 2002 an FIR No. 192/2002 was lodged with PS Kavi Nagar, Ghaziabad, U.P. The petitioner was admitted on September 16, 2002 in Central Jail, Tihar and remained in custody till October 10, 2005, as an undertrial prisoner. Petitioner was granted regular bail by this Court in the year 2005.

4. On May 28, 2008, the petitioner was convicted by the Court of Ld. Additional Sessions Judge, Patiala House Court, New Delhi and was sentenced to life imprisonment as well as fine of Rs.1 lakh under Section 302 IPC and in default of payment of fine, to undergo simple imprisonment for one year. The petitioner was, in addition, sentenced to rigorous imprisonment for 10 years and a fine of Rs.50,000/- each for conviction under Section 364/34 IPC, in default to undergo simple imprisonment for six months and rigorous imprisonment for five years with a fine of Rs.10,000/- under Section 201/34 IPC, in default, simple imprisonment for three months. All the sentences were to run concurrently.

5. It is the case of the petitioner, on January 14, 2010, the petitioner was granted interim bail for a period of two weeks on the ground of his sister's wedding. It is noted that the petitioner assailed the judgment dated May 28, 2008 of the Ld. ASJ, in this Court. This Court on April 02, 2014 dismissed the appeal and upheld the sentence of conviction. It also directed vide an order on sentence dated February 6, 2015, the case of the petitioner shall not be considered for grant of remission, till completion of 25 years. It is stated by the petitioner that on May 15, 2014, the petitioner was released on parole

for a period of 10 days to attend his brother's marriage. It is noted that earlier petitioner filed a writ petition before this Court being W.P.(Crl.) 782/2020. The said petition was disposed of on May 01, 2020 calling upon the respondent No.1 to consider the representation of the petitioner. It is pursuant thereto, the impugned order has been passed.

6. It is the case of the petitioner and submitted by Ms. Yadav that he has a history of suffering from Tuberculosis ('TB', for short) and had to undergo regular treatment. In June 2004, he was admitted for two days in Deen Dayal Upadhyay Hospital in New Delhi and was subsequently taken to AIIMS. Again, in August / September, he was diagnosed with tuberculosis with pleural effusion and resolved pericardial and lung lesions and was on anti-tubercular treatment. On September 03, 2004 and after evaluation and management, he was discharged on September 14, 2004. It is his case that, he was admitted on August 14, 2008 in the hospital on the diagnosis of disseminated tuberculosis and was discharged from the hospital on September 06, 2008. Again, he had to visit the hospital on October 24, 2008 for the diagnosis of Disseminated Koch's disease (widespread TB).

7. According to Ms. Yadav, owing to the health of the petitioner and his history of having TB, he has faced several issues inside the prison with respect to his health. He had regular visits to the hospital for the same disease. He was admitted on February 25, 2009 again for the follow up check-up. He had developed abdominal pain and vomiting. He was discharged on June 04, 2009. He was again admitted in the hospital on October 07, 2009 for the follow up case of Koch's chest and clavicular region on ATT. He had complained of giddiness, pain and breathlessness on walking. He was discharged on December 16, 2009. Again, on September 29, 2010, the petitioner was diagnosed with FUC of Disseminated Koch's with PIVD and

Radiculopathy. He also suffered from lower backache, pain in the thigh radiating downwards. He also suffered from PIVD L5-S1.

8. Ms. Yadav stated that while experience on COVID-19 infection in TB patients remain limited, it is anticipated that people ill with both TB and COVID-19 may have poorer treatment outcomes, especially if TB treatment is interrupted. It is further stated that TB patients should take precautions as advised by health authorities to be protected from COVID-19 and continue their TB treatment, as prescribed. Further, people ill with COVID-19 and TB show similar symptoms such as cough, fever and difficulty in breathing. Both diseases attack primarily the lungs and the biological agents transmit mainly via close contact, the incubation period from exposure to disease in TB is longer, often with a slow onset. According to her, there are three major jails in Delhi, i.e., Tihar Jail, Mandawali prison and Rohini prison. The cases of COVID-19 have spread over in Delhi Jails as well. Rohini Jail and Mandawali Jail have reported COVID-19 cases in the last one week, which clearly show that COVID-19 cases are on the rise and there is no question of them receding. Recently, on May 25, 2020, Tihar Jail where the petitioner is lodged currently, has also reported a fresh COVID-19 case. The jails in Delhi are overcrowded. There are 175 percent more prisoners than their full capacity. Considering the volatile situation, the petitioner has filed the present petition seeking his release who is aged about 43 years and is not medically fit having suffered from dangerous ailment of TB.

9. According to Ms. Yadav, the impugned order, which reads as under, has been passed in a mechanical manner and has not taken into consideration the reason for filing the same. In fact, the impugned order does not deal with the medical condition of the petitioner, his vulnerability to contract COVID-19 and the necessity to grant Emergency parole.

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*In pursuant to notification vide No. F.18/191/2015/hg/1379-1392 dated 23.03.2020 making amendment in provision of ‘Regular Parole’ by adding Rule 1212A in Delhi Prison Rules 18/191/2015/hg/1428-1438 dated 27.03.2020 to grant upto 7 weeks of Emergency parole. Delhi Government has constituted a Committee under the Chairmanship of DG (Prisons) to screen and recommended the case of grant of emergency parole to the Convicts.*

*In this regard, I am directed to inform that the application of Convict Vishal Yadav S/o Sh. Kamal Raj was considered by Committee for grant of Emergency Parole and the Committee did not recommend the case of Convict in view of sentence awarded i.e actual imprisonment of 25 years without consideration of remission and further to undergo 05 years of RI which shall run consecutively the objection raised by Mrs. Neelam Katara (Victim Party) for grant of emergency parole was also taken into consideration.*

*In view of above, Competent authority has not granted Emergency parole of 08 weeks to Convict Vishal Yadav S/o Kamal Raj. The convict may be informed proper acknowledgment”*

10. She also stated that the grant of parole has nothing to do with remission. The petitioner suffered from tuberculosis in the year 2004 and since then he has been suffering from one health issue or the other and all of them have been related to respiratory issues. She stated that various State Governments have proposed measures to release several prisoners apprehending the outbreak of Corona Virus inside the jails. Unless proper measures are taken the novel Corona Virus will spread rapidly in our jails endangering the life of inmates including the petitioner and not only the

petitioner and correction workers would be at high risk, but also the general public. She states that it is a case where the petitioner should be released on emergency parole for a period of 45 days.

11. Mr. Rajesh Mahajan, Ld. ASC (Crl.) appearing for the State opposed the grant of prayer as made in the petition. According to him, a reading of the impugned order shows that the application of the petitioner was considered by the Committee and the Committee did not recommend the case of the convict in view of the sentence awarded, i.e., actual imprisonment of 25 years without consideration of remission. The order also records that the objections raised by the victim party i.e. Mrs. Neelam Katara were also taken into consideration. As per the petitioner, he has not preferred any challenge to the judgment of conviction and sentence passed by this Court. He states, in view of the emergent situation of threat of Covid-19, Govt. of NCT of Delhi decided to amend the provisions of the Delhi Prison Rules, 2018 ('DPR', for short) and to incorporate provision with regard to grant of Emergency Parole. Vide Notification dated March 23, 2020, Govt. of NCT of Delhi amended and introduced "Emergency Parole" by incorporating Rule 1212A. In furtherance and prescription of the said Rule, vide order dated March 27, 2020 passed by Deputy Secretary (Home), Govt. of NCT of Delhi decided to constitute a Committee headed by DG (Prisons) to screen and recommend cases for grant of Emergency Parole to convicts. Certain categories of convicts were to be considered for grant of emergency parole by the said Committee. A bare reading of the said order shows that at best a convict has a right to be considered for grant of Emergency parole but does not have an absolute right to be released on such parole. The case of the petitioner was duly considered and rejected by way of the impugned order and thus to that extent, the petitioner cannot have any grievance.

12. It was also his submission that vide order dated March 27, 2020 it was inter-alia directed that the period of Emergency parole shall be counted towards the sentence of the prisoner. Counting the period of parole towards the sentence of the prisoner amounts to grant of remission to a prisoner. Since in the case of petitioner, as per the order on sentence dated February 06, 2015 passed by this Court, the petitioner is not to be considered for grant of any remission till completion of 25 years of actual imprisonment, he would consequently not be entitled to grant of any relief which curtails his sentence before completion of 25 years of actual imprisonment. In other words, grant of Emergency parole to the petitioner would amount to an executive order being passed, which would be in clear violation of the judicial order dated February 06, 2015, wherein the stipulation of 25 years of actual imprisonment has been imposed by the Division Bench of this Court and which part of sentence has been also upheld upto the Supreme Court in the appeals filed by the co-convicts.

13. Without prejudice to what is stated above, Mr. Mahajan stated, that order dated March 27, 2020 covered convicts who have availed parole/furlough in the past. Though the petitioner was granted 'parole' vide order dated May 16, 2014 passed in WP (Crl) 905/2014 but in effect the release was actually 'suspension of sentence' and not 'parole'. This was so because at the relevant time, appeal for enhancement of sentence was still pending adjudication before this Court and it was during the pendency of said appeal that the petitioner was ordered to be temporarily released. In other words, prayer for parole does not lie if the appeals in respect of conviction or sentence are still pending adjudication as such convicts can move for suspension of sentence before the Appellate Court. It is also submitted, the fact that the said order was passed by the Division Bench which was hearing

the appeals and not by Single Bench, which normally hears parole petitions, shows that notwithstanding the nomenclature given to the petition or the temporary release of petitioner as 'parole', it was in effect an order for 'suspension of sentence' only. Hence, the temporary release of petitioner vide order dated May 16, 2014 was actually 'suspension of sentence' and not 'parole'. Consequently, petitioner would not qualify the requirement of order dated March 27, 2020 of having availed parole/ furlough in the past as what he availed was actually 'suspension of sentence' by the Appellate Court.

14. According to him, for grant of Emergency parole, petitioner has to foremost show that he fits into and fulfils the criteria laid down for grant of Emergency parole. The sentence awarded to the petitioner in the present case is 25 years of actual imprisonment without consideration of remission. He stated, the meaning of "Remission" is explained in ***State (Govt. of NCT of Delhi) vs Prem Raj, (2003) 7 SCC 121***, as under:-

*"...Remission is reduction of the amount of a sentence without changing its character. In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the Court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it...."*

15. He has also drawn my attention to Rule 1212A of DPR to contend that grant of Emergency parole shall be subject to such conditions as may be prescribed by the Government. He has also drawn my attention to para 3 of order dated March 27, 2020 of Govt. of NCT of Delhi to contend that the period of Emergency parole shall be counted towards the sentence of the prisoner. This provision is in contradistinction to Rule 1198 of DPR which deals with regular paroles and which states that the period spent by a prisoner

outside the prison while on parole in no way is a concession so far as his sentence is concerned and that the prisoner has to spend extra time in prison for the period spent by him outside the jail on parole. The petitioner's case also does not fit in with the Circular dated April 17, 2020, as serial number 5 excludes cases of convicts who are not to be released before specific period or are not to be considered for remission. According to him, petitioner's case falls in such exception. In case petitioner is granted Emergency parole, it would violate the dictum of the sentencing order passed by the Court because counting the Emergency parole period towards sentence would amount to granting remission to the petitioner.

16. Mr. Mahajan stated that the ground for seeking parole can be looked into, once petitioner shows that he is entitled to grant of Emergency parole as per the relevant provisions of law because the ends cannot justify the means. According to him, without prejudice to what is stated above, medical ground of petitioner suffering from TB is not established on record because medical report (at page 174 last part) records general medical condition of patient as stable. All medical documents relied upon are very old and there is no contemporaneous document to show that petitioner is presently suffering from TB nor is there any material on record to suggest that past cured TB of petitioner in any manner makes him more vulnerable to COVID-19 or that the petitioner has low immunity. Pertinently, for treatment of this very ailment, TB, which the petitioner now seeks to resurrect, the Division Bench adversely commented on the repeated hospital visits of the petitioner and finally directed that the 320 days spent by petitioner in hospital be not counted as period which he has undergone sentence. This very treatment for TB, which did not inspire confidence earlier of Division Bench when it set up Committee and Medical Board to go into all aspect of treatment taken by the petitioner,

cannot at this stage be used by petitioner for seeking Emergency parole as it would amount to taking premium of his own wrongs. Mr. Mahajan stated that the petitioner is lodged as a single prisoner in Cell no. 4 of Ward 7, Central Jail no.1, Tihar and thus cannot complain of lack of social distancing. In this regard, he relied upon report from jail. He further submitted that the Prison Authorities and administration are very much cognizant of the seriousness of steps required to prevent spread of corona virus in prisons and are accordingly taking all requisite steps and precautions in that regard and such steps are also being monitored and scrutinized by a High Powered Committee chaired by Hon'ble Ms. Justice Hima Kohli.

17. According to Mr. Mahajan, the aspect of threat to the complainant and witness, who have been provided security due to this very case, is a relevant consideration for grant of any temporary release to the petitioner as any release, can jeopardize their lives. This was also a ground taken into consideration while rejecting earlier petitions for parole. In this regard, he placed reliance in the case of *State of Rajasthan vs. Kishan Lal, (2013) 11 SCC 395*. According to him, the petitioner has not been granted any relief of temporary release after the enhancement of sentence by this Court. After passing of enhanced sentence, all his applications for parole / furlough on various grounds including exercising his constitutional right of filing of SLP, selling of property, reviving social ties, taking care of daughter etc., have all been dismissed by this Court. According to Mr. Mahajan, the reasons which weighed with the Division Bench to enhance the sentence from ordinary life, which in ordinary circumstances allows remission after 14 years, to 25 years of actual sentence without consideration of remission are relevant and germane to the adjudication of any temporary release also.

18. It is also the submission of Mr. Mahajan that vide order dated July 30, 2015 passed by this Court in W.P. (Crl.) No. 1493/2015, the prayer of the petitioner for grant of regular parole even for filing SLP, was declined and he was granted only custody parole. The reasons which weighed with this Court for not granting the petitioner regular parole even for filing of SLP also apply at this stage to the present petition seeking parole/ Emergency parole. Further in 2017, Petitioner preferred another petition seeking parole, which was dismissed by this Court vide order dated April 20, 2018 passed in WP (Crl.) 3170/2017. It is also submitted that in the above case, the complainant preferred an application u/s 340 Cr.PC *inter-alia* against the petitioner herein for making false averments, on which application, judgment stands reserved by this Court. After the passing of enhanced sentence vide order dated February 06, 2015, petitioner has never been granted regular parole or furlough. Observations regarding past conduct of petitioner in the judgment of Division Bench, are relevant for temporary release of petitioner and form grounds for opposition on merits.

19. Mr. P.K. Dey, learned counsel for the respondent No.2 would submit that the petitioner was convicted and sentenced to imprisonment for life. The appeal filed against the conviction and sentence also got dismissed by this Court. This Court sentenced the petitioner and others to life imprisonment which shall be 25 years of actual imprisonment without consideration of remission u/s 302 IPC and fine of Rs. 50 Lacs and for 5 years and fine of Rs. 2 Lacs for offence u/s 201 IPC and both the sentences were directed to run consecutively. The petitioner did not challenge the order of this Court and accepted the same. According to him, the impugned order is well considered and justified. He has also drawn my attention to Circular dated April 17, 2020 issued by the Office of DG (Prisons) to contend that Sl. No. 5 of the said

circular provides *'more than 14 years and life convicts, except those who are having specific direction not to release before specific period, or not to consider for remission'*. In other words, petitioner is not eligible for grant of the emergency parole. According to him, the Competent Authority passed the impugned order after perusal of the record including the objection raised by the respondent No.2 against the grant of emergency parole.

20. It is also his submission that the petitioner may have suffered from TB in the year 2004 but was completely cured and there is no record to show that he is presently suffering from TB. He has drawn my attention to order dated March 16, 2020 passed by Supreme Court in SLP (Civil) 1/2020 wherein the Supreme Court observed that in Tihar Jail, an isolation facility for COVID-19 prisoners has already been set up. Further, the Supreme Court on March 23, 2020 directed the authorities to take measures to stop forthwith all the possibility of outside transmission of COVID-19.

21. It is also the submission of Mr. Dey that the outing of the petitioner to the hospitals without any serious ailment was in connivance with the jail officials. He has visited Batra Hospital almost 70 times, out of which 40 visits were merely 'for review'. In this regard, he has also drawn my attention to the observation made by this Court that the stay of the petitioner in the Batra hospital shall not be counted as a period which he has undergone sentence. He also submitted that the conduct of the convict recently has also not been satisfactory. During the pendency of Crl. Appeal No. 741/2008, the convict filed an application for interim bail on the ground that he require finance and for that he wants to sell property No. 5/421, Vaishali, Ghaziabad, whereas the said property had already been sold, which fact was brought to the notice of this Court by respondent No.2. On similar ground, the petitioner

filed another W.P. (Crl). No. 3170/2017 for grant of parole for a period of three months, which also came to be dismissed.

22. In the end, he submitted that in view of circular dated April 17, 2020 and the conduct of the petitioner, he is not entitled to the emergency parole and there is no merit in the present petition.

23. Respondent No.3, Ajay Katara also filed his reply to the petition wherein he stated that he is the only witness, who did not turn hostile and assisted the administration of justice and on account of that, he is suffering immensely since 2002 till date. He stated, that after becoming a witness in this case, he has been loaded with about two dozen false cases, including rape cases, by or at the instance of the friends, associates, relatives, family members of the convict and petitioner's co-accused Vikas Yadav. The cases were found to be false after investigation and the police filed closure report/Final report, etc. He even remained in custody for 50 days in one of the cases, and after investigation, police found the said case to be false and filed a closure report. That about seven cases of rape were filed against him and all the complainants were belonging to the same community or relative or associate of the convict family. All the rape cases were found false. The police filed closure reports or in some cases, this Court has quashed the FIRs. Thus, he has been continuously harassed, pressurized, for the only fault that he gave evidence and stated the true facts in the Nitish Katara murder case against the convict Vishal Yadav and co-accused. It was also his case, several attempts were made to kill and kidnap him and put him under threat for extortion etc., at the hands of the relatives, friends, associates and family members of the convicts. He had lodged about 10 FIRs for the above and the cases are pending at present. It is stated that during the evidence before the Ld. Trial Court, he was threatened and pressurized several times by the

convict's family and in this regard, the Ld. Trial Judge observed that the fear expressed by him is well founded and accordingly directed the Director General of Police (DGP) Lucknow, U.P. to provide security to him. That even at present, he is facing a serious threat to his life and even his family. He is very apprehensive and frightened that if the convict is granted parole, his life would be in serious danger. He also placed reliance on Circular dated April 17, 2020 to contend that Serial No. 5 is applicable which totally bars to grant of Emergency parole to the convict, since he was sentenced to 25 years with a direction that during this period of 25 years he is not entitled for the remission by this Court which was confirmed by the Supreme Court of India. Hence, as per this Circular itself, he is not eligible for Emergency parole.

24. He also stated that the convict has sought parole basically on the ground of TB. In the writ petition, the convict has not stated anywhere that he is currently suffering either from TB or from COVID-19. The convict is not suffering from tuberculosis or any other serious ailment, though in 2004, may have suffered from TB which was cured, but subsequently there is no record to suggest that till date his TB ailment is continuing. In this regard, he has referred to paras 604, 605 and 623 of the order of Division Bench of this Court. He stated that the conduct of the convict during custody was not good. The convict used money power to stay in the Batra hospital for more than one year without any serious ailment which was found by the medical board constituted by this Court. The medical board submitted its report on February 20, 2012 and as per the said report the convict was not suffering from any acute or severe medical condition. In this regard, he has placed reliance on para 625 of the judgment on sentence. The Division Bench of this Court also mentioned in Para 881 (VIII) (i) of the judgment on sentence dated February 6, 2015 that the periods of the admissions in the Batra Hospital

totaling 320 days shall not be counted as a period which the convict had undergone imprisonment.

25. In her rejoinder arguments, Ms. Yadav stated that the circular / order issued by the Govt. of NCT of Delhi are general orders, which cannot override the power of the Court to pass appropriate orders. She, by drawing my attention to Rule 1198 of DPR stated that the provision is for regular parole and as per order dated March 27, 2020, all pending applications for grant of regular parole would be deemed to be withdrawn for grant of emergency parole. She contended that the petitioner had earlier been granted regular bail, interim bail and parole but at no occasion, he had misused the same. That apart, she vehemently contested the argument of Mr. Mahajan and Mr. Dey that the Division Bench by upholding the conviction and directing the period spent by the petitioner in the hospital shall not be counted as a period undergone in imprisonment by stating that the Division Bench has never stated that the petitioner has not suffered from TB. So, it was her submission that the petitioner had in fact suffered TB and is vulnerable of contracting COVID-19 having low immunity.

26. She stated that the stand of the respondent No.1 that the petitioner has been kept in a separate cell is misconceived as the COVID-19 has reached Tihar Jail and there is a likelihood that the petitioner, with low immunity level, may contract COVID-19. She stated that it is not the case of the petitioner that he is suffering from TB today. She has also referred to WHO report and the effect of COVID-19 on TB patients. She highlighted the position of law that a convict has also right to life, which cannot be violated. She prayed for the relief, as made in the petition.

27. Having heard the learned counsel for the parties and perused the records, at the outset, it must be stated that Rule 1212A was incorporated in

the DPR whereby in the event of emergency situations like threat of epidemic etc., which warrants immediate easing of population of the inmates in prison, the Government may grant up to eight weeks parole. The said Rule also stipulates, the grant of parole shall be subject to such conditions, as may be prescribed by the Government.

28. It is the case of the respondent No.1 that it has issued order / circular dated March 27, 2020 and April 17, 2020 to ease congestion in Delhi jails. It was the submission of Mr. Mahajan that circular dated April 17, 2020 clearly spell out that the convict serving more than 14 years and life convicts, with specific direction not to be released before specific period, or not to be considered for remission, would not be entitled for grant of emergency parole.

29. There is no dispute that the sentencing order dated February 06, 2015, in the case of the petitioner contains a stipulation of not being considered for grant of remission till completion of 25 years of actual sentence. If that be so, Mr. Mahajan is right in contending that the case of the petitioner falls under the exception, which is depicted in the following manner:-

| <i>Sl. No.</i> | <i>Classification of Convict</i>                                                            | <i>Period as convict and overall period</i>                                  | <i>Appeal Status</i>       |
|----------------|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------------------|
| XXXXX          | XXXXX                                                                                       | XXXXX                                                                        | XXXXX                      |
| 5.             | <i>More than 14 years and lifer convicts (except those having specific direction not to</i> | <i>01 year as conviction period and overall period undergone is 04 years</i> | <i>Appeal is dismissed</i> |

|  |                                                                                     |  |  |
|--|-------------------------------------------------------------------------------------|--|--|
|  | <i>release before<br/>specific period or<br/>not to consider for<br/>remission)</i> |  |  |
|--|-------------------------------------------------------------------------------------|--|--|

30. Mr. Mahajan is also right in contending that the order dated March 27, 2020 inter-alia states that the period of emergency parole shall be counted towards the sentence of prisoner, which according to him amounts to granting remission to a prisoner but in view of the sentence passed by the Court not to consider the case of the petitioner for grant of any remission till completion of 25 years of actual imprisonment, the petitioner would not be entitled to grant of any relief, which curtails the sentence before completion of 25 years of actual imprisonment.

31. The plea of Ms. Yadav that circular / order are general in nature, cannot override the power of the Court to pass appropriate orders including grant of emergency parole, is not appealing. This I say so, the DPR have been made in exercise of powers conferred under Section 71 of the Delhi Prisons Act, 2000. It is in these Rules, that Rule 1212A has been incorporated. The statutory Rule as incorporated clearly empowers the Government to stipulate such conditions as deem appropriate for grant of emergency parole. It is in exercise of this power, the Government has issued order / circular dated March 27, 2020 and April 17, 2020. I have already reproduced the relevant stipulation in the circular dated April 17, 2020, which in effect bar the consideration of the petitioner given the sentence imposed for consideration for grant of emergency parole.

32. In any case, neither the vires of Rule 1212A of the DPR nor the order dated March 27, 2020 and circular dated April 17, 2020 have been challenged in the writ petition. In the absence of any challenge, the issue of grant of emergency parole to the petitioner has to be considered within the four corners of Rule 1212A, order dated March 27, 2020 and circular dated April 17, 2020 and according to me, the petitioner's case is not liable to be considered on merit.

33. It is precisely the aforesaid position, which has been narrated by the Authority in the impugned order dated May 16, 2020. The said conclusion cannot be faulted.

34. The plea of Ms. Yadav, that the Authority has not considered the medical condition of the petitioner is misplaced, as the medical condition would not be relevant as the case of the petitioner falls in the exception in the circular dated April 17, 2020.

35. In view of the above, I am of the view that the other submissions made by the learned counsel for the petitioner about the ailment suffered by the petitioner; his vulnerability; the fact that he has not misused the bail / interim bail / parole earlier granted to him; the spread of COVID-19; that prisoners have been contracted COVID-19 in Tihar jail are inconsequential.

36. Similarly, it may also be not necessary to go into the submissions made by Mr. Mahajan, Mr. Dey and Mr. Katara about the petitioner's conduct. This I say so, when the petitioner is not entitled for consideration on merit the aforesaid aspects have no relevance. At the same time, I take note of the stand of the respondent no.1 that the petitioner has been lodged as a single prisoner in Cell no.4 of Ward 7, Central Jail No.1, Tihar. Further that the authorities and administration are taking all requisite steps and precautions to contain COVID-19 which are being monitored by a High-Powered Committee. The

aforesaid stand demonstrates the measures taken by the authorities to safeguard the health of the inmates.

37. In view of the above, I am of the view that the present petition has no merit. The same is dismissed. No costs.

**V. KAMESWAR RAO, J**

**JUNE 18, 2020/ak**

