

\$~2

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

+ W.P.(CRL) 1021/2020 & CRL.M.A. 8793/2020

AAS MOHAMMAD ..... Petitioner

Through: Mr. Puneet Garg, Adv.

versus

STATE ..... Respondent

Through: Ms. Kamna Vohra, ASC for  
State

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGEMENT (ORAL)**

%

**16.07.2020**

(Video-Conferencing)

1. This is a writ petition, seeking release of the petitioner on parole.

2. The petitioner is a life convict, consequent to his having been found guilty by the learned trial court of having committed offences punishable under Section 302/201 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC").

3. The appeal, preferred by the petitioner thereagainst, was dismissed by this Court, on 15<sup>th</sup> April 2010, and further appeal, to the Supreme Court, was also dismissed.

4. Admittedly, the petitioner has suffered over 15 years of actual incarceration.

5. The petition seeks parole, *inter alia*, on the ground that the petitioner belongs to a poor family, and that his only other family members are a 70 year old mother, who suffers from renal complications, and a younger brother. They are said to be at the verge of starvation.

6. The petitioner also submits that, owing to the extended period during which he remained incarcerated, he and his family members mutually desire to meet each other.

7. Notice was issued on this petition, and a status report has been filed by the Superintendent, Tihar Jail.

8. Reference has been made, in the status report, to punishments having been suffered by the petitioner in 2017 and 2019, as well as to the fact that there are multiple cases pending against him. Apparently, on that ground, the empowered committee headed by Director General (Prisons), to whom the case of the petitioner had earlier been referred, rejected the prayer of the petitioner, for parole, as communicated, to the petitioner, on 18<sup>th</sup> June, 2020.

9. Admittedly, on 29<sup>th</sup> May, 2019, another petition, for parole, by this petitioner, was allowed by this Court.

10. The said order merits reproduction, as thus:

“1. By this petition, the petitioner seeks parole on the ground that his mother is unwell and he has to take care of

her.

2. A status report has been handed over which is taken on record.

3. As per the status report, the medical documents of the mother of the petitioner have been verified and it has been found that the mother of the petitioner is suffering from staghorn calculi right kidney and has been advised lapcholecystectomy with right PCNL+JJ.

4. The nominal roll of the petitioner reflects that the petitioner was being granted regular paroles and furloughs however when furlough was granted to him for a period of two weeks with effect from 12<sup>th</sup> July, 2016, the petitioner jumped the same and was re-arrested in a case under Section 25 Arms Act at PS Suraj Kund on 10<sup>th</sup> November, 2017 whereafter he was readmitted to Tihar Jail on 5<sup>th</sup> January, 2018. The jail punishments to the petitioner have only been awarded only after he was re-admitted to jail.

5. Considering the medical report of the mother as also the fact that the petitioner deserves a second chance of reformation, this Court deems it fit to grant parole to the petitioner. It is, therefore, directed that the petitioner be released on parole for a period of four weeks on his furnishing a personal bond in the sum of Rs.15,000/- with two surety bonds of the like amount to the satisfaction of the learned Trial Court, further subject to the condition that one of the surety would be a family member of the petitioner who would keep the mobile phone in active mode during the pendency of the parole of the petitioner.

6. Petition is disposed of.

7. Copy of this order be communicated to the petitioner through Superintendent, Mandoli Jail.”

**11.** To a query, Ms. Kamna Vohra, learned ASC appearing for the State, does not dispute the fact that the petitioner surrendered, consequent to the aforementioned grant of parole, to him, on the date

fixed therefor, and that, as per the nominal roll of the petitioner, he did not misuse the facility of parole extended to him.

**12.** The petitioner has relied, *inter alia*, on Rules 1198 and 1200 of the Delhi Prisons Rules, 2018 which read thus:

**“Rule 1198.** Parole means temporary release of a prisoner for short period so that he may maintain social relations with his family and the community in order to fulfil his familial and social obligations and responsibilities. It is an opportunity for a prisoner to maintain regular contact with outside world so that he may keep himself updated with the latest developments in the society.

XXX

XXX

XXX

**Rule 1200.** The objectives of releasing a prisoner on parole and furlough are: i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters, ii. To enable him to maintain and develop his self confidence, iii. To enable him to develop constructive hope and active interest in life, iv. To help him remain in touch with the developments in the outside world, v. To help him remain physiologically and psychologically healthy, vi. To enable him to overcome/recover from the stress and evil effects of incarceration and vii. To motivate him to maintain good conduct and discipline in the prison.”

**13.** The petitioner has also placed reliance, *inter alia*, on the judgment of the Supreme Court in *Inder Singh v. State*<sup>1</sup>, the relevant passages, whereof read as under:

“Once we agree, as we do, that the conviction under Section 302 is right, the sentence imposed, namely, life imprisonment is the minimum. Even so, there is an amount of psychic distress in marching two young men into lifelong incarceration. The humanistic aspect of the case may highlight the deplorable plight of

---

<sup>1</sup> AIR 1978 SC 1091

the man behind the murderer and the mind behind bars. The fact that he has committed a murder in a fit of anger or prodded by family feud, cannot warrant his being further criminalised by a long term of brutalising prison life. These two young men must be redeemed for society because they are after all, men. In this land elevated by the noble example of *Valmiki* and the human faith of Gandhiji, anyone with any background has a hopeful future given a therapeutic prison process.”

(Emphasis supplied)

While upholding the sentence, imposed by the Trial Court, on the appellants before it in the said case, the Supreme Court directed, nevertheless, that, if the conduct of the appellants was satisfactory, they be released on 2 months’ parole every year.

**14.** Reference has also been made, in the petition, to various judgments of this Court, in which parole was granted to convicts, who had suffered punishments, for disorderly conduct in the past.

**15.** The aim of administration of criminal justice has, over a period of time, evolved and is, presently, considered today as reformatory as it is retributive. In this backdrop, extended periods of incarceration, as has been observed by the Supreme Court in various authorities, inevitably took a toll on the physical and mental well-being of under trials, or of convicts.

**16.** Having said that, it is equally true that no cast iron principles can be formulated to govern such cases, and that each convict has to be assessed based on the facts applicable to him. Each case is different, and no generalised directions, regarding grant of parole, can justifiably exist. Informed exercise of discretion has, ultimately, to

rule the day.

**17.** While it is true that the petitioner did, in 2017 and 2019, suffer punishments on account of misconduct, this Court, nevertheless, granted parole to the petitioner *vide* its order dated 29<sup>th</sup> May, 2019, reproduced hereinabove.

**18.** There is no dispute about the fact that the petitioner did not misuse the said facility of parole, and surrendered on the date fixed by this Court therefor. He, thereby, justified the confidence reposed on him, by this court, while enlarging him on parole.

**19.** It is also not in dispute that the petitioner has not, after his having been taken back in custody, committed any misconduct, and that his conduct during incarceration has, thereafter, been satisfactory.

**20.** The above facts, seen in conjunction with the fact that the petitioner has an aged mother and a younger brother, who have been deprived of the company of the petitioner for an overall period of 15 years, convinces me that, in the interests of justice, the petitioner deserves to be released on parole, for a period of two weeks.

**21.** It is ordered accordingly.

**22.** The petitioner is granted parole for a period of two weeks, from the date of his release, subject to his furnishing of a personal bond for the sum of ₹ 10,000/- with one surety of the like amount to the

satisfaction of the learned trial court, further subject to the condition that the surety would be a family member of the petitioner who would keep his/her mobile phone in active mode, during the currency of the parole of the petitioner.

**23.** The petition is allowed to the aforesaid extent.

**C. HARI SHANKAR, J.**

**JULY 16, 2020/dsn**

