

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 20.01.2022
Pronounced on: 25.01.2022

MAT 743 of 2021
With
CAN 1 of 2021

(Through Video Conference)

Noor Mohammed @ Sahabaz @ Sikendar

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Mujahid Ahmed,
Mr. Sahid Uddin Ahmed, Advocates
... for the Appellant

Mr. Amitesh Banerjee,
Mr. Suddhadev Adak, Advocates
... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the order of the learned Single Judge dated 07th July, 2021 whereby WPA 2594 of 2019 has been disposed of with the direction to respondent No. 2 to resolve the security issue and dispose of the appellant's application dated 27th November, 2018 for release on parole keeping in view the directions contained in the conclusion part of the order.

2. Appellant was an accused in the POTA case and was found guilty and sentenced by the Special POTA Court, Mumbai. The appellant was also an accused in Khadim abduction case in Sessions Trial No. 14(10) of 2012, corresponding Sessions Case No. 65(1) of 2003. He has been convicted for offence under Section 342 read with 120B of the Indian Penal Code, by the judgment and order dated 18th April, 2018 passed by the Additional Sessions Judge, 2nd Court, Alipore. Criminal Appeal No. 144 of 2018 has been filed by the appellant against conviction, which is pending before this Court. The appellant had filed the Writ Petition No. 2594 of 2019 seeking a direction to the respondents to consider his representation dated 27th November, 2018 for parole and to allow the appellant to go on parole for a period of 30 days to visit his family. Before the learned Single Judge, report in the form of affidavit was filed on behalf of the State respondents taking the stand that the appellant was a life convict connected to a serious case and parole for a long period of 30 days at an address situated at Mumbai was not viable from the point of view of security. It was also disclosed that earlier the appellant was granted parole under police guard for two days excluding journey time vide memo dated 28th November, 2019 but the Calcutta Police Authorities had expressed inability to provide police escorts and guards at Mumbai because State of Maharashtra does not fall within their jurisdiction. The initiative of the concerned State Authority of West Bengal to shift the appellant from Presidency Correctional Home, Kolkata to Taloja Central Jail, Khargar, Mumbai permanently for facilitating meeting of appellant with his family members and near relatives was also not acceded to.

3. Learned Single Judge has duly taken note of the fact that the respondent authorities are not opposed to the appellant's release on parole but considering the difficulties in implementing the parole order, initially parole for two days was granted. In this regard, learned Single Judge has also duly considered the security factor and the fact that even if police authorities in West Bengal provide escort during the transit from Kolkata to Mumbai, it will be the responsibility of the Mumbai/Maharashtra Police to keep track over the appellant's activities while he stays at Mumbai/Maharashtra. In this regard, the judgment of the Hon'ble Supreme Court in the matter of **Asfaq Vs. State of Rajasthan and Others, (2017) 15 SCC 55** has been duly taken note of wherein various circumstances have been enumerated when parole should or should not be granted and it has been observed that not all people in prison are appropriate for grant of furlough or parole. The record reflects that exchange of correspondence has taken place between the West Bengal Authorities and Maharashtra Police Authorities and there is no positive response on record by the Maharashtra Police to protect the appellant and keep track of his activities during his stay in Maharashtra.

4. Learned Single Judge has duly taken note of Section 62 of the West Bengal Services Correctional Act, 1992 which provides for release of prisoners on parole as also the Prisoners Act, 1900 read with West Bengal Amendment by the Prisoners (West Bengal Amendment) Act, 1955 and thereafter, has found that there is no embargo on the appellant to be released on parole and allow him to transfer outside West Bengal during his period of release on parole if he is so released save and except the security factor. It has been noted

that the Jail Authorities or the Police Authorities in West Bengal have no control over the Police Authorities in Maharashtra and it is for the local police at Maharashtra, where the appellant intends to stay during the parole, to keep a watch on his activities so that the appellant does not turn out to be a threat to the society or that his life is not endangered. It has also been noted that this Court had no territorial jurisdiction over the State of Maharashtra to transfer the petitioner from Alipore Jail, West Bengal to a jail in Maharashtra and thereafter, release the appellant on parole.

5. Having regard to above, learned Single Judge, has issued the following directions:

“The respondent no. 2 in order to resolve the security issue and dispose of the petitioner’s application dated 27th November, 2018 for release on parole is given the following directions:-

- i) The respondent no. 2 shall within a week from date collect the details of specific place or places where the petitioner intends to stay in Maharashtra on being released on parole;
- ii) The respondent no. 2 shall within a week from the date of receiving such information seek a confirmation from his counterparts in Maharashtra wherein the petitioner intends to stay on being released on parole for keeping a watch on the petitioner’s activities threat by forwarding a copy of this order.
- iii) The respondent no. 2 shall wait for four months from the date of seeking confirmation from his counterparts in Maharashtra and shall thereafter within three months formally dispose of the petitioner’s application dated 27th November, 2018 for release on parole by passing a reasoned order by taking into consideration of all relevant factors.

- iv) The respondent no. 2 shall be free to decide on the time period for which the petitioner may be released on parole and the terms and condition for his release.
- v) The respondent no. 2 shall also take into consideration the developments subsequent to the filing of the writ petition i.e., death of the petitioner's brother on 15th May, 2021.
- vi) In the event there is no confirmation from the side of the Maharashtra Police Authorities within three months from the date of respondent no. 2 seeking confirmation from his counterparts in Maharashtra, the respondent no. 2 shall dispose of the petitioner's application dated 27th November, 2018 by a reasoned order giving all details as expeditiously as possible but not beyond seven months from date.

Writ petition is accordingly disposed of. There shall, however, be no order as to costs.”

6. During the pendency of this appeal on 23rd December, 2021, learned Counsel for the State had made a submission before this Court that the State of West Bengal had no objection in granting parole to the appellant but Maharashtra Police, where the appellant has to go, is not coming forward to escort and protect the appellant. To this, submission of learned Counsel for the appellant was that the respondent authorities should first pass an order for release on parole indicating the difficulties related to release even after the order of parole, then at least appellant will have an opportunity to approach the Court of competent jurisdiction in Maharashtra seeking a direction to the concerned police authorities in Maharashtra to give proper protection.

7. After the above stand of learned Counsel for the appellant before this Court, competent authority, i.e., ADG & IG of

Correctional Services, West Bengal has passed the order dated 11th January, 2022 granting the parole to the appellant for a period of seven days excluding journey time by recording as under:

“The representation dated 27.11.2018 (page 19-20 of WP no. 2594(W) of 2019) submitted by the petitioner Convict Noor Mohammad @ Sahabaz @ Sikaner is considered.

Efforts continue from this Directorate to secure assistance of authorities in Maharashtra so that the petitioner is able to visit his residence situated at Mumbai Maharashtra by availing parole.

As soon as an appropriate response is received or the procedural steps are worked out further action will be taken.

This would be his first chance of parole and hence a short period of 2 (two) days Parole was granted in the previous Order. However granting and executing parole to an outside state requires a considerable time, effort and co-ordination. Hence considering the long detention spent in custody but keeping in mind that this would be his first chance of parole, in supersession of this Directorate previous Order No. 6689/PR-15(10-P)/2019Pt. dated 28.11.2019 Noor Md. @ Sahabaz @ Sikander is granted 7 (seven) days parole excluding journey time.”

8. The above order reflects that the prayer of the appellant to release on parole has duly been granted by the respondent authorities.

9. Submission of learned Counsel for the appellant at this stage is appellant should be granted at least 30 days parole as was granted in the case of co-accused Mojammel Sk. @ Akram @ Akka. The learned Counsel for the State has fairly stated before this Court that this is the first parole of the appellant and if he comes back safely without creating any disturbance, then his further prayer for grant of parole for a longer period will be duly considered by the State Authorities.

10. We find the above stand of State to be reasonable. We have also examined the order of the learned Single Judge which does not suffer from any error. In pursuance to the direction of learned Single Judge, order of parole in favour of appellant has already been passed. Hence, no case is made out to interfere in this appeal which is accordingly dismissed, however, with liberty to the appellant to approach the competent Court at Mumbai in case, if any difficulty is felt in compliance of the parole order dated 11th January, 2022.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.01.2022

PA(RB)