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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25.05.2022

Judgment delivered on: 30.05.2022

+ W.P.(CRL) 125/2022

SIKANDAR

..... Petitioner

Through: Mr.Shiv Chopra, Ms.Aadhyaa Khanna and Ms.Nishtha Jain, Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Mr.Avi Singh, ASC for the State with Mr.Karan Dhalla and Ms.Mizba Dhebar, Advocates and with SI Dharmendra Kumar, P.S.: Gokalpuri.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. This is a writ petition preferred on behalf of the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.PC whereby it is prayed as under:

“a) issue a writ in the nature of Certiorari quashing the rejection order no. F.18/69/2016/HG/1678 dated 22.11.2021 passed by the respondent; and



b) issue a writ in the nature of Mandamus directing the respondent to release the petitioner on parole for a period of three months;

2. In brief, the petitioner approached the Competent Authority for grant of parole for a period of three months in order to maintain social ties & family relations, to curb inner stress due to prolonged incarceration and to offer prayers at the grave of his deceased mother. The request of the petitioner was rejected by the Competent Authority vide order dated 22.11.2021 on following grounds:

"1. The convict is not entitled for parole in view of Rule 1210 sub rule (IX) of Delhi Prison Rules-2018, which states that: -

Rule 1210 sub rule (II):- "The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application". In this case, as per record, said convict has been awarded 20 multiple punishments. Punishments dated 21.11.2019, 20.12.2019 & 19.01.2020 awarded to said convict, which are the major punishments as per Rule 1271 of Delhi Prison Rules- 2018. Further, punishments dated 12.08.2021 & 15.08.2021 are minor punishments as per DPR-2018.



2. As per Rule 1211 of Delhi Prison Rule-2018, which provide that:- "In the following cases, parole shall not be granted, except if in the discretion of the competent authority special circumstances exist for grant of parole;

(VIII). If prisoner is convicted for multiple murders whether in single case or several cases'. In this case, as per crime detail, said convict held guilty for committing of two persons i.e. namely Reshma and Aziz-ul-Hasan.

3. The overall conduct and last one year jail convict of the said convict is reported to be unsatisfactory being multiple punishments.

4. Further, as per report received from the office of DG (Prisons), it is stated that considering the serious nature of crime he has committed, his overall conduct being unsatisfactory, absence of report of probation officer, the grant of parole to the above said convict is not recommended at this stage."

3. Aggrieved by the aforesaid order dated 22.11.2021, the present petition has been preferred for release on parole. Learned counsel for the petitioner submits that the rejection order has been passed on stereo type grounds and the petitioner has already undergone 16 years and 6 months incarceration. It is also submitted that the petitioner lastly availed parole for 30 days as granted in term of W.P. (Crl.) No.1556/2020 from 25.11.2020 to 26.12.2020 and did not misuse the liberty. It is also contended that the



rejection of parole for multiple murders is untenable in the eyes of law, since the respondent failed to appreciate that earlier also parole was granted to the petitioner. The punishments dated 12.08.2021 and 15.08.2021 are stated to be pending approval before the jail visiting Judge. It is also submitted that the petitioner's family comprises of his brother namely Rashid, who is co-accused in the present case and presently out on emergency parole, three sisters and is having deep roots in the society. Reliance is also placed upon (i) *Vinod Vs. State of NCT of Delhi* W.P.(Crl.) No.2376/2021 decided on 04.02.2022, (ii) *Shahjahan Vs. State* W.P. (Crl.) No.3945/2018 decided on 18.02.2019, (iii) *Asfaq Vs. State of Rajasthan & Ors.* (2017) 15 SCC 55, (iv) *Sonu @ Ashutosh Tiwari Vs. The State (Govt. of NCT of Delhi)* passed in W.P. (Crl.) No.2209/2020 decided on 15.01.2021 and (v) *Ms. Kiran Vs. State* passed in W.P. (Crl.) No.74/2019 decided on 14.01.2019.

4. On the other hand, the petition is vehemently opposed by the learned ASC for the State and it is submitted that in view of the reasons recorded in the order dated 22.11.2021, by the Competent Authority, the petitioner is not entitled for release on parole.

5. I have given considered thought to the contentions raised.

It may be noticed that Chapter XI Delhi Prison Act, 2000 (hereinafter referred to as the 'said Act') deals with prison offences. Section 46 enlists prison offences and Section 47 provides punishment for such prison offences. Section 54 provides for punishment for not fulfilling conditions subject to which remissions etc. was given and where any prisoner fails



without sufficient cause to observe any of the conditions, or subject to, which his sentence was remitted, suspended or he was released on parole or furlough, the Competent Authority may cancel such order granting remission, suspension, parole and furlough. As such, the maintenance of prison discipline is imperative, both from the perspective of administration as well as to ensure safe custody and security of other prisoners and in case of failure to observe any of the conditions, cancellation of beneficial order may be passed.

Under Section 71 of the said Act, the Government has been empowered for making the rules generally to carry out the provisions of the Act and specifically to provide for or any of the matters listed in Section 71 (2) of the said Act. Chapter XIX of Delhi Prison Rules, 2018 framed in pursuance of power conferred under Section 71 of the Delhi Prison Act, 2000 deals with parole and furlough. The purpose of parole and furlough as provided in Rule 1197, is a progressive measure of correctional services. The release of prisoner on parole saves the prisoner, not only from the evils of incarceration but also enables him to maintain social relations with his family and community. Further, the release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison. However, it may be noticed that period spent by prisoner outside the prison while on parole in no way is a concession, so far as his sentence is concerned and the prisoner has to spend extra time in prison for the period spent by him outside the Jail on parole. On the other hand, furlough is purely an incentive for good conduct in the prison and, therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his



sentence. The same is granted after a gap of certain qualified number of years of incarceration for maintaining good conduct.

6. The objectives for releasing a prisoner on parole or furlough are further specified in Rule 1200. Rule 1208 further lays down that subject to fulfillment of conditions stipulated in Rule 1210, it would be open to the Competent Authority to consider the applications for parole on the grounds provided therein. Though, one of the purposes for grant of parole is to maintain family and social ties but the same cannot be oblivious of the jail conduct of the prisoner and is circumscribed by Rule 1210 as well as Rule 1211 of Delhi Prison Rules, 2018.

7. In terms of Rule 1210 of Delhi Prison Rules, 2018 in order to be eligible to be released on parole, the conduct of the prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and conduct of prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application.

8. Further, Rule 1211 provides the category of cases in which the parole shall not be granted, except if in discretion of the Competent Authority special circumstances exist for grant of parole.

Rule 1211 (III) and (VIII) may be beneficially reproduced which read as under:-

“III. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of



riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report

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VIII. If prisoner is convicted for multiple murders whether in single case or several cases.”

9. A bare perusal of order dated 22.11.2021 passed by the Competent Authority reveals that the petitioner had been awarded 20 multiple punishments on various occasions. The punishments dated 21.11.2019, 20.12.2019 and 19.01.2020 are the major punishments, as per Rule 127 of DPR, 2018. Further punishments dated 12.08.2021 and 15.08.2021 are minor punishments as per DPR, 2018. On the face of record, the case of the petitioner falls within the category of cases under Rule 1210 whereby the convict is not eligible for release on parole. The petitioner appears to have been repeatedly violating the Prison Rules leading to major/minor punishments. In the aforesaid background, the reliance by the Competent Authority on Rules 1210 and 1211 cannot be faulted with. Merely because the petitioner had been earlier released on parole cannot be a ground that he is entitled to be released automatically without consideration of his subsequent conduct. If the overall conduct for the last one year is reported to be ‘unsatisfactory’, the petitioner cannot claim parole as a matter of right as he becomes ineligible for grant of the same. It may be noticed that earlier parole was granted to the petitioner vide orders dated 11.07.2018 and 20.11.2020 passed in W.P. (Crl.) No. 63/2018 and W.P. (Crl.) No.1556/2020



prior to infliction of further penalties. In my considered view, the punishments dated 12.08.2021 and 15.08.2021 have been rightly considered by the Competent Authority in denying the benefit of parole. There is no dispute as to the proposition that the parole may be granted to establish social ties and the same stands already affirmed in several decisions but the same needs to be assessed in the light of jail conduct of the prisoner and circumscribed by conditions provided in Rules 1210 & 1211 of the Delhi Prison Rules, 2018.

Further, the proposition of law with reference to the judgments relied upon by the learned counsel for the petitioner is well settled.

The conduct of the petitioner by virtue of infliction of several punishments has not been shown to be above reproach. In my considered opinion, the order passed by the Competent Authority under the Rules does not suffer from any perversity and is in consonance with the objectives envisaged under Delhi Prison Rules, 2018.

For the aforesaid reasons, the writ petition is dismissed.

A copy of this order be forwarded to the Jail Superintendent and petitioner for information.

ANOOP KUMAR MENDIRATTA
(JUDGE)

May 30, 2022/A