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

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+ **W.P.(CRL) 29/2023**

PARSU RAM

..... Petitioner

Through: Mr. Aman Panwar (DHCLSC)
and Mr. Shivam Singh Baghel,
Advocates

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyaya,
ASC for State with SI Deepak
Patwal, P.S. Kirti Nagar and
Mr. Akshay Kumar, Mr.
Abhijeet Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

06.01.2023

SWARANA KANTA SHARMA, J (ORAL)

CRL.M.A. 302/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by petitioner for issuance of writ of

mandamus or any other appropriate writ for directing the respondent to release the petitioner on parole for a period of eight (08) weeks on the ground of re-establish social ties with family members and society and for filing Special Leave Petition (“SLP”) before the Hon’ble Supreme Court of India against the judgment dated 18.07.2022 passed by this Court in Criminal Appeal No. 1288/2019 whereby the conviction and order on sentence was passed by learned Additional Sessions Judge, West, Special Court (POCSO), Tis Hazari Courts, Delhi.

4. In the present case, the petitioner was arrested in case FIR bearing No. 57/2012, registered at Police Station Kirti Nagar, Delhi for the offences punishable under Sections 363/323/376/34 of Indian Penal Code, 1860 (“IPC”) and *vide* judgment dated 18.07.2022, he was convicted under the aforesaid Sections by learned ASJ-01, West, Special Court (POCSO), Tis Hazari Courts, Delhi and *vide* order on sentence dated 03.07.2019, the petitioner was sentenced (i) to undergo rigorous imprisonment for seven years alongwith fine of Rs.10,000/- and in default, simple imprisonment for 01 year under Section 363 of IPC, (ii) to undergo rigorous imprisonment for six months under Section 323 of IPC, (iii) sentenced to undergo rigorous imprisonment for life alongwith fine of Rs.1,00,000/- and in default, simple imprisonment for 01 year under Section 376 of IPC, and (iv) to pay compensation of Rs.2,00,000/- to the prosecutrix, and in default, simple imprisonment for two years.

5. Learned Counsel for the petitioner states that petitioner is in Judicial Custody since 29.02.2012 and is presently confined in

Central Jail No. 10, Rohini, New Delhi and has already undergone incarceration of about 10 years out of R.I. for life and fine. It is stated by learned counsel for the petitioner that petitioner desires to file an SLP for which he has sought parole. It is further stated that an application dated 28.09.2022 was filed before the Home Department, Government of NCT of Delhi and the same was dismissed by respondent vide letter dated 18.11.2022, observing that there were no special circumstances that existed for grant of parole and the convict could file SLP from the jail itself where free legal aid is available to all prisoners.

6. On the other hand, learned APP for the State submits that considering his conduct in the jail as per Rules, parole cannot be granted to the petitioner.

7. Having considered the overall facts and circumstances, this Court noted that the present applicant has been awarded multiple punishments on 13.10.2016, 02.07.2019 and 13.06.2021. Before deciding the present petition, it will be useful to reproduce the relevant extract of the impugned order dated 18.11.2022:

“With reference to your office letter No.F.10/SCJ-10/AS(CT)/2022/1610 dated 28.09.2022, on the subject cited above, I am to inform you that the request in respect of the above said convict for grant of parole has been considered and rejected by the Hon'ble Lt. Governor of Delhi in view of the followings:-

1. The convict is not entitled for parole in view of Rule 1210 sub rule (II) 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 offences

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 nominal roll, said convict has been awarded punishments dated 13.06.2021, which is a major punishment as per Rule 1271 of Delhi Prison Rules 2018.

2. Further, as per nominal roll, last one year conduct, and overall jail conduct of said convict is reported to be unsatisfactory. The above said convict can file SLP from jail itself, where free legal aid facility is available to all prisoners..."

8. Attention of this Court has been drawn by learned APP for the State to the fact that the overall conduct of the present applicant since last 1 ½ year was satisfactory and she has no objections if parole may be granted to the present applicant.

9. After considering overall facts and circumstances of the case, this Court is of the opinion that the present accused wants to file Special Leave Petition before the Hon'ble Apex Court through advocate of his choice. It is not disputed that the accused has been in judicial custody since 29.02.2012 the accused was convicted by the learned Trial Court and thereafter, the conviction and the sentence were upheld by this Court in Criminal Appeal No. 1288/2019 decided *vide* Judgment dated 18.07.2022. It cannot be overlooked that an accused has right to effectively pursue his legal remedy by filing SLP through the counsel of his choice which is a valuable right. Such a right of a citizen cannot be withheld or the remedy denied to him on the ground that free legal aid is available in the jail and SLP can be

filed from the jail itself. The accused while being lodged in jail may not be able to exercise his right to engage advocate of his own choice effectively. Needless to say, filing SLP in the highest court of the country which is the last hope for availing justice cannot be denied to an accused on the ground of his unsatisfactory conduct. In the present case, it has been pointed out that in the last 1 ½ years, no punishment has been handed out to him and in the last 2 years, only one punishment that has been handed out to him is on account of smoking a *bidi*. Considering the overall facts and circumstances of the case, this Court is not inclined to withdraw the right of the petitioner to file SLP and for that purpose being enlarged on parole.

10. While passing this order, this Court also remains conscious of the fact that the present accused/applicant has remained in judicial custody since the day of arrest i.e. 29.02.2012 and is continuously in the jail for around ten years, excluding remission.

11. In this view of the matter, the present petition is allowed. The petitioner is granted parole for a period of four weeks, subject to the following conditions:-

- i. The petitioner shall furnish a personal bond in the sum of Rs.20,000/- with one surety of the like amount, who shall be a family member of the petitioner, to the satisfaction of the learned trial court.
- ii. The petitioner shall report to the SHO of the local area, once a week on every Sunday at 10:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.

- iii. The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.
 - iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
 - v. The petitioner shall furnish a copy of the SLP filed in the Supreme Court to the Superintendent Jail at the time of surrendering. A copy of the SLP shall also be placed on record in court.
 - vi. The period of parole shall be counted from the day when the petitioner is released from jail.
12. In the above terms, the present writ petition alongwith pending application stands disposed of.
13. A copy of this judgment be sent by the Registry to the Jail Superintendent.
14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 06, 2023/ns