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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 26.04.2022

+ **W.P.(CRL) 308/2022**

SHADAB

..... Petitioner

Through : Mr. M.L. Yadav, Advocate.

versus

STATE

..... Respondent

Through : Mr. R.S. Kundu, ASC (Criminal) for
the State along with Mr. Mukul
Dagar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

1. The present petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been filed on behalf of petitioner for issuance of writ in the nature of *certiorari* for quashing the Order No. F.18/96/2018/HG/1373 dated 07.10.2021 passed by the respondent and for issuance of writ in the nature of *mandamus* directing the respondent to release the petitioner on parole for a period of three months.
2. In brief, petitioner is life convict, presently serving sentence in case FIR No. 67/2011, under Sections 302/377 of the Indian Penal Code,



registered at P.S. : Aman Vihar, Delhi. The judgment and order on sentence dated 07.04.2014 and 08.05.2014 respectively are stated to have been upheld in CrI. A. No. 1609/2014 *vide* judgment dated 16.12.2015.

3. The petitioner is stated to have undergone incarceration for about 10 years and 10 months in actual without remission and has also earned remission of about 01 year 07 months and 11 days as on 05.05.2020.

4. Learned counsel for the petitioner submits that the petitioner had applied for grant of parole before the respondent *vide* application No.F.14/SCJ14/AS(CT)/PAROLE/202 1/3372 dated 26.08.2021 to maintain social ties and family relations which has been rejected by the respondent *vide* the Order No. F.18/96/2018/HG/1373 dated 07.10.2021, mechanically on the stereotype grounds of jail conduct of the petitioner being ‘unsatisfactory’ and based upon police verification report dated 12.08.2021.

5. Reliance is further placed on **Rule 1210 sub rule (II) Delhi Prison Rule, 2018**:, which reads as follows :

"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."

6. It is further urged that the last punishment awarded to the petitioner for a prison offence was on 25.04.2019 and the petitioner has been thereafter maintaining ‘good conduct’ for about last 03 years in jail. It is also submitted



that the petitioner is unmarried, aged about 32 years and his family comprises of old aged parents who are suffering from old age ailments, two younger brothers and two married sisters who are presently living in their matrimonial homes. Petitioner is stated to belong to poor strata of the society and it is prayed that Petitioner needs to meet his family and arrange finances for their subsistence.

7. Reference is made to an order dated 15/01/2021, passed in ***Sonu @ Ashutosh Tiwari Vs. The State (Goyt. Of NCT Of Delhi)*** in ***W.P. (Crl) 2209/2020*** in support of contentions.

"The State has fairly submitted through the ASC for State that there is an error in the nominal roll that had been placed on record as issued by the Deputy Superintendent, Central Jail No.3, Tihar, New Delhi mentioning the recovery of a mobile phone from the applicant on 14.01.2020 and rather what was recovered from the applicant was some loose tobacco. It is further submitted on behalf of the State that there are other involvements of the applicant which include a physical scuffle with the co-accused on 30.04.2020 and a threat of filing a false complaint against the jail staff and creating a lot of nuisance on 07.02.2019.

The aspect of the address of the petitioner and the number of persons residing in his family with the petitioner's mother being an old aged lady is however verified, though it is brought forth also through the



status report dated 12.01.2021 that the brother of the petitioner stays at his native address with his mother.

The petitioner is indicated to be in custody for 9 years, 3 months and 2 days as on 17.10.2020 as per the nominal roll that has been received.

Taking the same into account, adopting a reformatory approach, it is considered appropriate that the applicant is allowed to be released on parole for a period of 4 weeks from the date of his release on submission of a bond for a sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Superintendent Jail, Delhi with directions"

8. Reliance is also placed on order dated 13.08.2020 passed in **Anil Kumar Vs. State (GNCT of Delhi)** in **W.P. (Crl) No.1053/2020** wherein following observations were made :

"6. Mr. Rajesh Mahajan, learned ASC for the State has pointed-out that the reason for rejection is principally that on 02.11.2018, when the petitioner was supposed to surrender after expiration of the previous parole granted to him from 01.10.2018 to 01.11.2018, the petitioner committed an offence in which he was arrested vide FIR No. 38658/2018 registered under sections 379/411 IPC at PS : Jamia Nagar. Mr. Mahajan contends that though the said offence was



subsequently compounded, the fact that the petitioner committed a penal offence while on parole makes him ineligible for grant of parole under Rule 1210 (IV) of the Delhi Prison Rules, 2018.

7. Mr. Kaushik on the other hand contends that all this was considered by the Co-ordinate Bench, when vide order dated 23.06.2020, it directed the competent authority to consider the petitioner's parole application 'sympathetically' subject only to his jail conduct and prison punishments. Mr. Kaushik submits that it is evident from the nominal roll that after 16.07.2019, which was the date indicated in the Co-ordinate Bench's order, no prison punishment has been awarded to the petitioner and his jail conduct has been 'satisfactory' and he is serving as lungar sahayak. Mr. Kaushik draws attention to the fact that the petitioner has served actual incarceration of almost 12 years, not counting about 01 year and 09 months of remission . 8. Counsel also points-out that the nominal roll shows that the petitioner has been granted interim bail , parole and furlough on no less than 07 occasions; and that he has evidently come back to prison each time. He also submits that the court may consider the fact that even the penal offence with which the petitioner was



charged was of theft, which was ultimately compounded.

9. In view of the above factual position, Mr. Mahajan also fairly submits that the State leaves the issue of grant of parole to the discretion of the court . Upon an overall conspectus of the foregoing facts and circumstances, especially considering the petitioner's long period of incarceration; the several interim bail and furlough orders already availed ; and order dated 23.06.2020 of the Coordinate Bench, this court is persuaded to grant to the petitioner parole for a period of 04 (four) weeks from the date of his release, on the following conditions.....”

9. The application has been opposed by learned APP for the State on the basis of jail conduct of the petitioner.

10. I have given considered thought to the contentions raised. The need for a balance to be maintained between two competing interests while granting parole or furlough, of reforming the convict on one hand and the public purpose and the interests of society on the other has been noticed by Supreme Court in *Asfaq v. State of Rajasthan, (2017) 15 SCC 55*. The relevant paras may be beneficially reproduced:

“19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to



be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

*20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. **Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments.***”

11. It may be observed that parole is a relief granted by the State which goes a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public



interest. Parole is normally granted in certain conditions and is governed by the guidelines framed in this regard. It is pertinent to note that the most important ground on which the parole is granted is to maintain family and social ties so that the convict is able to maintain his family and social contacts. As such, a humanist approach needs to be taken affording such convicts an opportunity to resolve their personal and family issues and to encourage offenders to demonstrate a commitment in relation to the society.

12. **Rule 1210 Sub rule (II) Delhi Prison Rules 2018** provides that the conduct of a prisoner who has been awarded with major punishment for a prison offence should have been uniformly good for the last two years from the date of application of parole and the conduct of the prisoner who has been awarded with a minor punishment or no punishment for any prison offence should have been uniformly good for last one year from the date of application.

13. In the present case, admittedly, there has been no adverse report against the petitioner for a period of last more than 03 years. Jail punishment was last inflicted to the petitioner about 03 years back on 25.04.2019. The police verification report dated 12.08.2021 received from the office of the SP, Shahjanpur, UP is also unable to bring anything adverse against the petitioner.

14. Considering the totality of facts and circumstances, the Order No. F.18/96/2018/HG/1373 dated 07.10.2021 passed by the respondent is unsustainable in the eyes of law having been passed in a mechanical manner. The petitioner deserves indulgence of parole to maintain family and social ties. The writ petition thus deserves to be accepted and impugned order is set aside. The petitioner is admitted to parole for a period of 04 (four) weeks



with effect from the date of his release on furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount to the satisfaction of the Jail Superintendent and subject to the following conditions :

- (i) The petitioner/applicant shall provide his mobile number to the SHO, P.S. Aman Vihar, Delhi /Jail Superintendent at the time of release, which shall be kept in working condition at all times. The petitioner/applicant shall not switch-off, or change the same without prior intimation during the period of his parole;
- (ii) The petitioner/applicant shall not indulge in any criminal activity or any illegal activities during the period of parole;
- (iii) Petitioner shall surrender before the Jail Superintendent on the expiry of the period of parole.

15. The writ petition is disposed of in above terms.

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

ANOOP KUMAR MENDIRATTA
(JUDGE)

APRIL 26, 2022

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