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

% *Order pronounced on 27.04.2022*

+ W.P.(CRL) 421/2022

AHMED SIKANDER Petitioner

Through: Mr. M.L. Yadav and Mr. Anshul
Yadav, Advocates.

versus

STATE NCT OF DELHI Respondent

Through: Ms. Kamna Vohra, ASC for the State.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.

1. By way of this writ petition the petitioner has prayed for quashing of order No. F.18/321/2013/HG/77 dated 14.01.2022 passed by the respondent and for issuance of writ of Mandamus directing the respondent to release the petitioner on parole for a period of three months.

1.1 The petitioner has stated that he is a life convict and presently serving his sentence awarded by the Ld. Trial Court in FIR No. 15/2008, PS Jama Masjid U/s 302/34 IPC. He was convicted vide judgment dated 26.02.2011 by the learned Trial Court and was sentenced to undergo RI for life imprisonment.

1.2 In an appeal preferred by the present petitioner before this Court, being appeal No. 337/2011, vide order dated 07.10.2013 conviction of the present petitioner was converted from Section 302 IPC to 304-I IPC and he was directed to undergo RI for 8 years and pay a fine of Rs. 5000/- and in default SI for 6 months.

1.3 After serving the said sentence he was released from jail. The complainant moved to the Hon'ble Supreme Court against the order of the High Court in Crl. A. No. 337/2011 and Supreme Court vide order dated 05.05.2017 set aside the judgment of the High Court of Delhi and reinstated the judgment of learned Trial Court and petitioner was directed to surrender for serving the life sentence awarded to him.

1.4. The present petitioner surrendered on 26.06.2019. He has already undergone total incarceration about 10 years. The petitioner had applied for grant of parole on 12.11.2021 to maintain social ties and family relations and to curb inner stress and depression, which was arbitrarily rejected by respondent on 14.01.2022 by citing stereotype grounds that the petitioner had violated the terms and conditions of the earlier parole; petitioner is a desperate criminal and listed bad character in Police Station Jama Masjid and there is every apprehension that he will jump the parole.

1.5 The grounds on which the impugned order has been challenged are that the rejection order is contrary to the basic tenets of law; the Competent Authority failed to appreciate that the petitioner has already undergone incarceration of about 10 years; the conduct of the petitioner has been uniformly good for about 2½ years; petitioner was not aware about the Supreme Court order directing the petitioner to surrender for serving the sentence of life imprisonment and as soon as he came to know about the said order, he immediately surrendered before the Court and the delay in surrendering was not intentional; the petitioner has been awarded Certificate of Recognition dated 26.01.2022 in respect of his good conduct and supportive approach; petitioner is a married man having a wife and two minor children and one daughter was born just after he had surrendered in

the jail.

1.6. Further grounds put forward for grant of parole are that the relevant authorities failed to consider that the purpose of incarceration is reformation and rehabilitation of petitioner; under the similar circumstance, this Court in W.P.(Crl.) 2209/2020 vide order dated 15.01.2021 had been pleased to allow the parole application; even in the past many other convicts who were similarly circumstanced, have been enlarge on parole and the petitioner is entitled to equal treatment under Article 14 of the Constitution of India; the Supreme Court as well as the High Court in number of cases have held that the convicts are entitled to be released on parole for one month twice in a year for their physical and mental well-being; the purpose of incarceration is not retributive but to reform and rehabilitate the convict; the petitioner has been undergoing his sentence honestly and diligently and he is working as a carpenter in Central Jail No. 14, Mandoli, Delhi.

1.7. The petitioner has undertaken to abide by all terms and conditions as may be imposed by this Court. The conditions of the house of the petitioner is very bad and is getting worse day by day. There is no male member in the family to look after his house.

2. Notice was issued. Status report has been filed. The relevant paragraphs of the status report are as under:-

“(2) In the above mentioned case Ld. Addl. Session Judge -T' (Central) Sh. R. K. Gauba after testimony of prosecution witness as well as material evidences, convicted both the accused persons u/s 302/34 IPC and sentenced them to life imprisonment and fine of Rs.5000/-.

(3) On 07.10.2013 Hon'ble High Court of Delhi

converted the sentence of petitioner to RI for a period of 8 years by allowing the Crl. Appeal No. 337/2011 which was filed by the petitioner against the decision of Ld. Trial Court.

(4) That the Hon'ble Supreme Court of India vide order dated 05.05.2017 set aside the above said Judgment of the Hon'ble High Court and re-instate the Judgment of Ld. Trial Court. Petitioner was directed so surrender for serving his life sentence awarded in this case but he did not pay heed towards the direction of Hon'ble Supreme Court of India and became underground. He surrendered before the concerned Court on 25.06.2019 after a period of 02 years due to pressure mount by local Police.

(5) That the Petitioner is a BC of PS Jama Masjid having eight previous criminal involvements. Petitioner was on parole for 3 weeks from 8 July 2014. He jumped the parole and did not surrender before the Tihar Jail authority for scheduled date 30.07.2014. Superintendent Central Jail Tihar New Delhi flashed the wireless message dated 02.08.2014 for his immediate arrest. On the intervening night 30/31.07.2014, Petitioner was found involved in case FIR number 185/14 u/s 324/34 IPC. He was arrested on 12.08.2014 for jumping parole and produced before the court. Convict Ahmed Sikandar was sent to Tihar Jail 12.08.2014 by the order of Ld. M. M. Central. He was also arrested in ease FIR No-185/14 PS Jama Masjid on 14.08.2021.

(6) That the address and the status of the family members of the petitioner has been verified. His wife Shahana Begum and two children are living at H. No- 143 2nd floor Gali Katra Gokul Shah, Matia Mahal. He has two children namely Mohd. Sultan 6 years old and Zara 3 years old. His wife earns her livelihood by doing some petty works in the house of other people. This is an ancestral property of the petitioner and his three brothers.

(7) That the brother of petitioner Mohd. Suleman is also co-accused in this case. He has jumped the parole also. He was released on parole on 11.04.2020 but he did not surrender before the Tihar jail authority on scheduled date 27.02.21. He was also found involved in case FIR number 185/21 u/s 324/341/34 IPC dated 25.08.21. PS Jama Masjid. He surrendered on 24.01.2022 after a period of one year due to pressure mounted by local Police. He was arrested in case FIR No-185/21 on 03.02.2022 in Tihar Jail.

8) That the petitioner applied for grant of three months parole but the parole was rejected by the Hon'ble Lt. Governor, NCT of Delhi vide order no. F-18/321/2013/HG/77 dated 14.01.22, In the present petition Mohammed Sikander prayed for quashing the above said rejection order and grant of parole for a period of three months.

(9) There is an apprehension that the appellant may jump parole like he and his brother co-accused Suleman did before and indulged in commission of crime while they were on parole.

3. I have heard arguments. The petitioner had applied for parole on 12.11.2021. This application was duly considered by the Competent Authority and a detailed order dated 17.01.2022 was passed. The petitioner has challenged the said order by filing the present writ petition. The impugned order dated 17.01.2022 is reproduced hereunder:-

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
HOME (GENERAL) DEPARTMENT
5th LEVEL, "A" WING, DELHI SACHIVALAYA, J.P. ESTATE, DELHI

No. F.18/321/203/HG/77

Dated: 17.01.22

To

The Superintendent

Central jail No. 14

Mandolin Delhi

Sub: - **Release on parole, of the convict Ahmed Sikander S/o Mohd. Yusuf, in case FIR No. 15/2008, U/S 302/34 IPC, PS- Jama Masjid.**

Sir,

With reference to your office letter No. F.14/SCJ-14/AS(CT)/PAROLE/2021/4146 dated 12.11.2021, on the subject cited above, I am to inform you that the request in respect of the said convict for grant of parole has been considered and rejection by the Hon'ble Lt. Governor, NCT of Delhi in view of the following:-

1. The convict is not entitled for parole in view of Rule 1210 sub rule (IV) of Delhi Prisons Rules 2018 which states that the convict should not have violated any terms and conditions of the parole or furlough granted previously". In this case, convict jumped the furlough and re-arrest in the same case on 12.08.2014.

2. As per police verification report the convict is desperate criminal and listed bad character of police station Jama Masjid and can threaten the victim as well as witnesses. There is strong apprehension of jumping parole by him as he no regard of the law. Hon'ble Supreme Court of India vide order dated 05.05.2017 directed the applicant/accused to surrender for serving his life sentence awarded in case FIR No. 15/2008 U/S 302/34 IPC & 27 Arms Act, PS- Jama Masjid but he did not pay heed towards the direction of Hon'ble Supreme Court of India and become underground. Local police mount pressure by one and another means resulting which he surrendered before concerned court only on 25.09.2019 after a period of 02 years and was sent to jail for serving his life sentence. He is listed bad character of police station Jama Masjid and involved in 9 criminal cases. Out of 9 cases 1 case is still pending trial which was committed by the applicant during parole period. Brother of the convict Md. Suleman is co-accused in case FIR No. 15/2008. He committed crime during his earlier parole period.

The convict may be informed accordingly.”

Yours faithfully

-sd-

14.01.2022

DY. SECRETARY: (HOME)

4. The conduct of the present petitioner has been found unsatisfactory at every stage. The Hon'ble Supreme vide order dated 05.05.2017 set aside the judgment of the High Court and restored the judgment of the Trial Court and the present petitioner was directed to surrender to serve out the sentence of life imprisonment. It has been submitted by the learned counsel for the petitioner that the present petitioner was not aware about the passing of the order by the Supreme Court on 05.05.2017. I have gone through the order passed by the Hon'ble Supreme Court. The opening paragraph of the said order states that the Hon'ble Supreme Court had heard the learned Additional Solicitor General appearing for the GNCTD and the learned counsel for the respondent/accused, apart from the learned counsel for the appellant (complainant). It clearly shows that the learned counsel for the present petitioner was present in the hearing before the Hon'ble Supreme Court and he was well aware about the order passed by the Division Bench. Moreover, no one can claim to be unaware of an order passed by the Hon'ble Supreme Court which was pronounced in the presence of the counsel for the present petitioner. The petitioner chooses not to surrender immediately before the learned Trial Court to undergo the life imprisonment but he surrendered only after more than two years from the date of order of the Hon'ble Supreme Court as he was taken into custody on 25.06.2019.

4.1 When the petitioner was released on parole for three weeks on 08.07.2014, he jumped the parole and he was involved in case FIR No.

185/2014 u/s 324/34 IPC during the said period. He was arrested on 12.08.2014, hence the apprehension expressed by the State that the petitioner may jump the parole is well founded and based upon actual apprehensions and keeping in view his earlier behaviour. He not only jumped the parole but he was indulging in committing other crimes during the period when he was on parole.

5. The impugned order dated 17.01.2022 is a well reasoned order, which was passed after due consideration of facts and law with regard to grant of parole. Keeping in view the past conduct of the petitioner and the relevant Rules, this Court is not inclined to grant the relief claimed in the present petition. The petition is accordingly dismissed. The petitioner be informed through concerned Jail Superintendent about the outcome of the present petition.

TALWANT SINGH, J

APRIL 27, 2022/mr

[Click here to check corrigendum, if any](#)