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

Judgment delivered on : 14.11.2022

+ **W.P.(CRL) 1499/2022**

PREM SINGH

..... Petitioner

Through: Mr. Dhan Mohan, Mr. Ravi Mishra,
Ms. Tanisha Bhatia and Ms. Shivangi
Yadav, Advocates.

versus

THE STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Sachin Mittal, ASC for State.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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JUDGMENT

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. Writ Petition has been preferred on behalf of the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of writ of mandamus or any other suitable writ or orders thereby directing the respondent/competent authority to release the petitioner with immediate effect on parole for a period of four weeks as per order dated 10.03.2022 for re-establishing social ties with family and the society.

2. In brief, as per the case of the petitioner, he is in custody since 10.09.2009 and has undergone about 12 years in imprisonment out of the total sentence for 20 years without remission, in FIR No.206/2009, under Section 302/34 IPC, PS Adarsh Nagar. Further the petitioner is claimed to have an excellent record in jail, but despite order dated 10.03.2022, granting parole to the petitioner by Home (General) Department, Delhi Secretariat,

the petitioner has not been released from jail. It is pointed out that several convicts released on parole during Covid period, pursuant to orders of the Court, are on parole and have failed to surrender and the petitioner has been declined the privilege in terms of Rule 1212 of Delhi Prisons Rules, 2018, since the co-accused has been released on parole.

3. In the status report filed on behalf of the State, it is admitted that the petitioner/convict has been granted parole for a period of four weeks by the Competent Authority, GNCT of Delhi, Home (General) Department, Delhi Secretariat as per order dated 10.03.2022. However, it is pointed out that the co-accused in the same FIR are on emergency parole since 15.05.2021 which has been extended from time to time and co-accused are not the family members of the petitioner as per definition of 'family' mentioned in Rule 1201 of Delhi Prison Rules, 2018. The petitioner as such is stated to be not entitled to be released on parole in terms of Note 2 of Rule 1212 of Delhi Prison Rules, 2018.

4. In order to appreciate the contentions raised by respondent, reference may be made to Rule 1212 of Delhi Prison Rules, 2018 and may be beneficially reproduced:

“1212. A convict would be released on parole for a period of maximum eight weeks in minimum two spells in a conviction year. However, the period of release in one spell should not be more than four weeks. There should be one month gap between parole and last furlough availed and vice-versa.

Note:-

(1) If the convict has applied for extension after surrendering

from the original parole or his application for parole is pending decision when he surrendered after availing original parole then his case will be considered as fresh case.

(2) Simultaneous parole to co-accused is ordinarily not permissible, however, in exceptional circumstances competent authority may consider for reasons in writing for granting parole to co-accused who are family members.”

5. In terms of Note ‘2’ of Rule 1212 of Delhi Prison Rules, 2018, the simultaneous parole to co-accused is ordinarily not permissible. However, in exceptional circumstances, it may be considered for granting parole to co-accused who are family members.

6. The question for consideration is whether the petitioner may be granted relaxation for simultaneous relief on parole, although co-accused is on emergency parole since long period and petitioner is not related as family member to said co-accused.

7. I am of the considered view that to arrive at a logical conclusion, it may be necessary to recapitulate 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, which need to be kept in perspective. The observations of Hon’ble Supreme Court in *Asfaq vs. State of Rajasthan, (2017) 15 SCC 55* 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.”

8. 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 and is ultimately aimed for the good of the society and, therefore, 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.

9. Ordinarily in terms of Rule 1212, two convicts should not be simultaneously allowed to be released on parole. The object appears to prevent any law and order situation which may be created by simultaneous release of co-accused except in terms of Note 2 to Rule 1212. However, the ineligibility envisaged under Rule 1212 for releasing two unrelated convicts on parole, cannot continue for long periods, so as to deny the co-accused of the benefit of parole. The petitioner herein has been earlier extended the benefit of parole from time to time as pointed out by learned counsel for the petitioner and has not misused the liberty. The date of surrender of co-accused has not been specified by the State/Prison Authorities, who are stated to have been released on emergency parole by the orders of Court owing to Covid conditions. As such it is a fit case for relaxation of Rule

1212, while exercising powers under Article 226 of the Constitution of India, by this Court.

In the facts and circumstances, it is considered apposite to allow the present petition in relaxation of Rule 1212 of Delhi Prison Rules, 2018. The petitioner is accordingly directed to be released on parole in terms of order dated 10.03.2022 for a period of four weeks from the date of his release on the terms and conditions mentioned in the aforesaid order and subject to following additional conditions:

- (i) To ensure that the co-accused/convict do not come in contact with each other, it is directed that the petitioner shall provide his mobile number to the Competent Authority concerned at the time of release, which shall be kept in working conditions at all times.
- (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;

Writ Petition is accordingly disposed of.

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

ANOOP KUMAR MENDIRATTA
(JUDGE)

NOVEMBER 14, 2022/akc