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

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Reserved on: 12.01.2023

Pronounced on: 17.01.2023

+ **W.P. (CRL) 89/2023**

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..... Petitioner

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

versus

THE STATE (GOVT OF N.C.T. DELHI) Respondents

Through: Mr. Sachin Mittal, ASC for
State with Mr. Nishant
Chauhan, Advocate and with
SI Rahul Kumar, P.S.New
Ashok Nagar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner for issuance of writ of certiorari for quashing the order dated 18.11.2022 passed by GNCTD rejecting

the application of the petitioner seeking parole for a period of three month and also for the issuance of writ of mandamus directing the respondent to release the petitioner on parole for a period of three months.

2. In brief, the case of petitioner is that he was convicted, vide order dated 30.08.2013, for the offences punishable under Sections 364A/368/344/347/120B/34 of Indian Penal Code, 1860, in case FIR bearing no. 393/2007, registered at Police Station New Ashok Nagar, New Delhi and was awarded rigorous imprisonment for life. His appeal against conviction was dismissed by this Court vide judgment dated 25.02.2016. In relation to this case, the petitioner has undergone almost 14 years and 10 months in jail.

3. It is stated by learned counsel for petitioner that petitioner has been released on parole twice, once by the order of this Court and once by GNCTD. Further, petitioner had been granted furlough on 07 occasions and that he had never misused this liberty and surrendered before the Competent Authority without any delay and no adverse report had been received from the police or competent authority. It is further stated that petitioner was granted parole for the third time i.e. when he was released on emergency parole due to COVID-19 pandemic situation on 15.05.2021, which was extended from time to time, but came to be re-arrested in another FIR No. 210/2021, registered at PS Special Cell, Delhi, for the offence punishable under Section 25 of Arms Act. However, it is stated that petitioner has been granted bail in this case.

4. Learned counsel for petitioner submits that the conduct of the petitioner in last more than 14 years has been satisfactory and 02 years have passed now from the date when FIR bearing no. 210/2021 was registered. It is further submitted by learned counsel for petitioner that petitioner seeks parole to re-establish social ties and further to complete the process of partition of ancestral joint property of family due to increasing differences in the family and due to repeated ill-health of the wife of the petitioner as she is undergoing treatment for her kidney.

5. On the other hand, learned ASC for the State has opposed the grant of parole on the ground that during the last parole, petitioner had committed another offence and if he is released on parole, there is no guarantee that petitioner will not commit further offences.

6. Heard the learned counsels for petitioner as well as State.

7. In the instant case, the petitioner had filed an application before the respondent for grant of parole which was dismissed by the respondent vide order dated 18.11.2022 by observing as under:

“1. The convict is not entitled for parole in view of Rule 1210 sub rule (III), (IV) and Rule 1212 Note (2) of Delhi Prison Rules-2018, which states that: -

1210 sub rule (III):- “During the period of release on parole or furlough, if granted earlier, the convict should not have committed any crime”.

1210 sub rule (IV):- “The convict should not have violated any terms and conditions of the parole or furlough granted previously”. In this case, the above said convict was released on emergency parole on 15.05.2021, which was extended time to time due to COVID-19

pandemic situation but he was re-arrested on 14.08.2021 in another case FIR no. 210/2021, u/s 25 Arms Act, PS Special Cell, Delhi.

Rule 1212 Note (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”. In this case, as per nominal roll, one of his co-accused of said convict namely Ashok Kumar Yadav was released on 14.05.2021 on emergency parole from CJ-02, Tihar Jail, New Delhi.

2. Further, as per nominal roll, the above said convict was convicted in another four cases. Two cases are also pending against the said convict.”

8. This Court notes that the present petition is filed for releasing the petitioner on parole for a period of three months to re-establish social ties with the family members and society, as well as to complete the process of partition of ancestral joint property of family, and also due to the illness of the wife of petitioner who is undergoing treatment for her kidney. Attention of this Court was also drawn to the fact that present petitioner is in judicial custody for almost 14 years and 10 months, without remission, and that the overall conduct of the petitioner is satisfactory.

9. It is not disputed that parole granted to the petitioner twice and furlough granted on 07 occasions was not misused by him. With respect to the emergency parole granted during the Covid-19 pandemic period, it was stated that petitioner was re-arrested on 14.08.2021 after an FIR for offence under Section 25 of Arms Act was registered against him. However, even in this case, he had been

granted bail vide order dated 28.10.2021. In the opinion of this Court, this incident cannot be the ground to dis-entitle the petitioner from seeking parole before this Court. While considering the grant of same, the Court also has to remain conscious of the fact that the petitioner has been awarded life imprisonment and that he has already remained in incarceration for more than 14 years. This Court cannot overlook the circumstances and the family exigencies that may have arisen in the last more than 14 years in the family of the petitioner. Needless to say, while dealing with an issue relating to grant of parole to a convict, the Courts are required to balance the interests of convict as well as of the society. However, the Courts are also required to consider cases, such as present one, with sensitivity and compassion, and an opportunity may be provided to a convict to re-establish social ties and resolve personal and family issues that may have arisen.

10. Considering the overall facts and circumstances of the case, the present petition is allowed. The petitioner is granted parole for a period of (03) three months, subject to the following conditions:

- a) 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 Jail Superintendent.
- b) During the period of parole, the petitioner shall stay within the limits of District Firozabad, Uttar Pradesh, except to travel to and from Central Jail, Tihar, Delhi, and shall ordinarily reside at the

address mentioned in this application i.e. House in Village Khanja Pur, Post Gazipur, Firozabad, Uttar Pradesh

- c) The petitioner will report on every Wednesday to the SHO of concerned Police Station in Firozabad, Uttar Pradesh, which exercises jurisdiction over the aforesaid residence of petitioner, between 11 am and 11:30 am for marking his appearance. However the petitioner will not be kept waiting for longer than one hour at the police station during such visits. Further, before his release on parole, the petitioner shall inform to this Court as well as to the Jail Superintendent about the details of Police Station in District Firozabad within whose jurisdiction the residence of petitioner is situated and where the petitioner has been directed to report during the period of parole.
- d) The petitioner shall furnish a telephone/mobile number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone/mobile number to the SHO of the Police Station concerned in District Firozabad, Uttar Pradesh.
- e) If the petitioner has a passport, he shall also surrender the same to the Jail Superintendent.
- f) Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
- g) The period of parole shall be counted from the day when the petitioner is released from Jail.

11. In the above terms, the present writ petition stands disposed of.

12. A copy of this judgment be sent by the Registry to the Jail Superintendent for information and compliance.
13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY17, 2023/kss

