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

+ **W.P.(CRL) 150/2023, CRL.M.A. 4610/2023, CRL.M.A. 22034/2023**

RAJ KUMAR @BHEEMA

..... Petitioner

Through: Mr.Vinayak Bhandari, Mr.Jaiswal
Singh, Ms. Teesta Mishra, Advs.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashivini
Kumar, Mr. Chavi Lazarus, Advs.
with Inspector Pankaj Gulia, PS NFC
New Delhi with SI Murari Krishan,
PS NFC New Delhi

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Date of Decision: 14.09.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed seeking following prayer:
 - a. *Issue a writ in the nature of Mandamus directing the respondent to release the petitioner on parole for a period of two months;*
2. The writ petition has been filed under Article 226 of the



Constitution of India for a grant of two months of parole to find an efficient and experienced lawyer and arrange resources for filing SLP before the Hon'ble Supreme Court against the impugned judgment of the Hon'ble Delhi High Court.

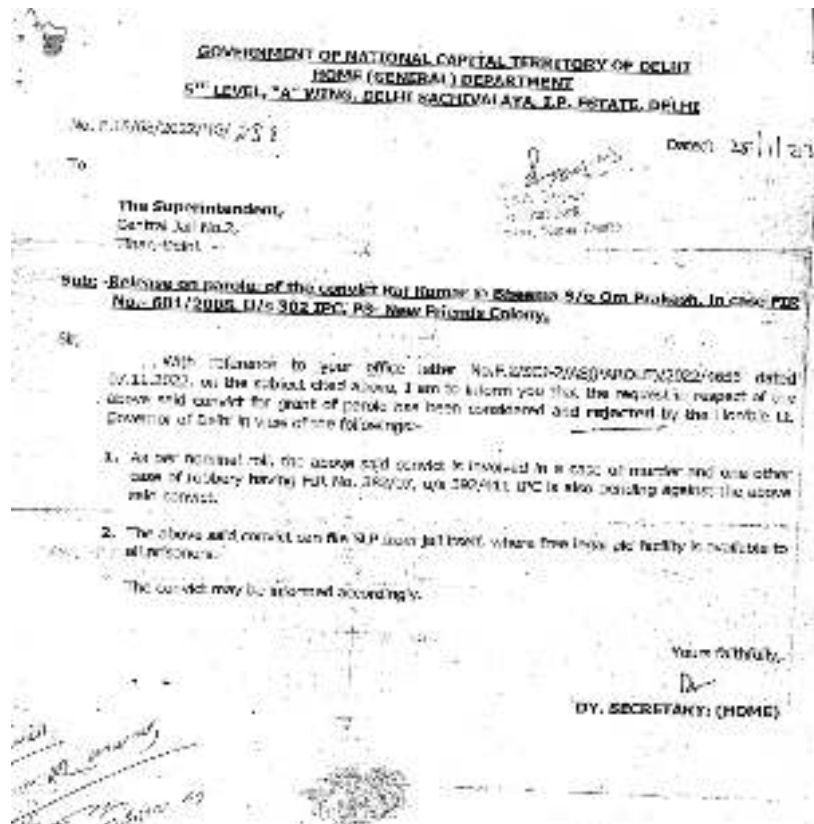
3. Learned counsel for the petitioner submits that the petitioner has been in custody for the last 14 years and his request for grant of parole for filing SLP has been rejected wrongly by the concerned authority.
4. Learned counsel for the respondent has submitted that the request for parole has been rejected in accordance with the Parole Rules. It has further been submitted that the accused is involved in the following cases:

District	PS	Fir No/Year	Under Section	Status (Period/Fine/Amount)	Status Date
SOUTH DIST	S.N.PURI	0132 / 1998	379/411 IPC	DISCHARGED	15/03/1998
SOUTHEAST	N.F. COLONY	0264 / 2005	25	CONVICTED	15/07/2005
SOUTHEAST	N.F. COLONY	0506 / 2005	392/411/34	ACQUITTED	05/07/2010
SOUTH DIST	MEHRAULI	0870 / 2005	395/402	PENDING TRIAL	15/12/2006
SOUTH DIST	MEHRAULI	0374 / 2005	25/54/33		
SOUTH DIST	MEHRAULI	0509 / 2005	380	ACQUITTED	06/12/2006
SOUTH DIST	S.N.PURI	0811 / 2005	394/34	CONVICTED	23/03/2007
SOUTH DIST	DEFENCE COLONY	0158 / 2006	382/34	DISCHARGED	12/02/2007
SOUTH DIST	MEHRAULI	0672 / 2006	454/380	ACQUITTED	01/02/2007
SOUTH DIST	MEHRAULI	0874 / 2006	25/44CT	PENDING TRIAL	19/12/2006
SOUTH EAST	O. I. ESTATE	0356 / 2007	392/34 IPC	PENDING TRIAL	21/12/2007
GAUTAM BUDDHA NAGAR	NOIDA SECTOR-39	0382 / 2007	392/411 IPC		
SOUTH EAST	N. F. COLONY	0601 / 2008	394/397/302/307/34 IPC	CONVICTED/Fine in Rs. 5000/-	20/02/2021
SOUTH EAST	O. I. ESTATE	0578 / 2008	457/380/411 IPC	CONVICTED	21/12/2007

5. Learned counsel for the respondent submits that the request for



parole has been rejected vide communication dated 25.01.2023 which reproduced as under:



6. Learned counsel for the respondent submits that therefore, there is no ground to grant the benefit of parole to the petitioner.
7. At the outset, this Court does not agree with the submissions made by the learned counsel for the respondent. The petitioner has a constitutional right to approach the Hon'ble Supreme Court against the order of conviction passed against the petitioner and such right cannot be denied only on the ground of other pending cases against him. The Co-ordinate of this Court in *Rakesh v. State of NCT of Delhi* 2022 SCC OnLine



Del 1346 has inter alia held as under:

"8. As regards the observation that filing of SLP constitutes no "special circumstance" as there is free legal aid available, suffice it to note that the courts have not agreed with this stance of the Government. Under Article 22(1) of the Constitution as well as Section 303 Cr.P.C., an accused person has been guaranteed with a Constitutional right to engage a counsel/pleader of his own choice. It is no doubt true that the Legal Services Authorities at all levels endeavour to provide excellent legal assistance to those in prison. But, to deny the convict an opportunity to engage with other counsel to enable him to make up his mind freely, as to whom he would wish to engage, would violate his constitutional rights to legal representation. In fact, it is because of the recognition of this right that the State Prison Rules, 2018 dealing with parole and furlough, recognizes that regular parole under Rule 1208 can be granted to a convict, to pursue filing of a Special Leave Petition before the Supreme Court."

8. Similarly, the coordinate bench of this court in ***Neeraj Bhatt v. State (Govt. Of NCT) of Delhi*** 2023 SCC OnLine Del 32 has inter alia held as under:

"6. It would be useful to reproduce Rule 1211 for ready reference, as below:—

"1211. In the following cases, parole shall not be granted, except, if in the discretion of the competent authority special circumstances exist



for grant of parole; I. to VI. xxx xxx VII. If the prisoner is convicted under POCSO.”

7. The bar in the said rule is not absolute since the competent authority has the discretion, even in such cases, to grant parole, provided there exist special circumstances. Though the special circumstances were to be considered by the competent authority, the impugned order does not refer to the special circumstances and that they were found insufficient for grant of parole, rather it only mentions that the SLP can be filed from the jail itself and that the conduct of the applicant was not satisfactory.

8. In this Court's opinion, the right of a citizen to avail a legal remedy in the final court of country, which may often be the last ray of hope, cannot be denied on such ground.

*9. As per Rule 1211 of Delhi Prison Rule, 2018, it clearly mentions that parole in the circumstances mentioned in the said Rule can be granted in the discretion of the competent authority if special circumstances exist for grant of parole. **The ground taken by the petitioner for grant of parole in the present case is filing of SLP against the judgment of the High Court in Criminal Appeal No. 391/2020 which was decided on 04.07.2022 whereby the judgment of conviction dated 05.12.2019 and order on sentence dated 19.12.2019 were upheld. It is the right of a citizen to effectively pursue his legal remedy in the last court of justice in the county by filing SLP through a counsel of his own choice which is a valuable right. This cannot be withheld merely on the basis of his past conduct or on the ground that free legal aid is available and that SLP can be filed from the jail itself. Needless to say, availing his legal remedy in***



the Apex Court of the country is the right of the petitioner and this Court is not inclined to withdraw the same."

(emphasis supplied)

9. The co-ordinate Bench of this Court in ***Rahul Gupta v. State (NCT of Delhi)*** in WP (CRL) 996/2023 vide order dated 12.09.2023 after taking into account, ***Rakesh (Supra)*** and ***Neeraj Bhatt (Supra)*** *inter-alia* held that Bar contained in Rule 1211 of Delhi Prison Rules, 2018 is not absolute and the filing of an SLP constitute a special circumstances in terms of said Rule.
10. As per the Nominal Roll, the conduct of the petitioner has been satisfactory in the jail. Taking into account the facts, circumstances and judicial pronouncements cited hereinabove, the petitioner is directed to be released on parole for a period of four weeks from the date of his release, 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 concerned Jail Superintendent.
 - ii. In case of any change in address, the petitioner is directed to inform the same to the concerned Jail Superintendent.
 - iii. The petitioner shall report to the SHO, PS New Friends Colony once a week, on every Sunday at 10:00



AM. The concerned officer shall release the petitioner by 11:00 AM, after completion of all necessary formalities.

iv. The petitioner shall not leave the NCT of Delhi during the period of parole.

v. The petitioner shall furnish his mobile number to the concerned jail authorities and to the Investigating Officer and keep it operational at all times.

vi. The petitioner shall surrender before the concerned jail authorities immediately upon the expiry of his parole.

11. In view of the above directions, the present petition along with pending applications stand disposed of.
12. A copy of this order be sent to the concerned Jail Superintendent for necessary information and compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 14, 2023/Pallavi