

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

% Reserved on: 24th March, 2023
Pronounced on: 02nd May, 2023

+ **W.P.(CRL) 499/2022**

VISHAL YADAV

..... Petitioner

Through: Mr. Ravi Prakash Mehrotra, Senior
Advocate with Mr. J. Scaria and Mr.
Apoorv Srivastava, Advocates.

versus

THE STATE (GOVT. NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Rajesh Mahajan, SPP with Ms.
Jyoti Babbar and Mr. Ranjeeb Kamal
Bora, Advs. for R-1.
Mr. P.K. Dey, Sr. Adv. with Ms.
Shilpi Dey Auditya and Mr. R.D.
Pathak, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed seeking release of petitioner on regular parole for a period of four weeks to pursue filing of a Special Leave Petition (SLP) before the Hon'ble Supreme Court against judgment delivered by this Court in Criminal Appeal No. 741/2008, in proceedings arising out of FIR No. 192/2002 at PS Kavi Nagar, under Sections 302/364/201/34 IPC upholding the conviction and enhancement of sentences. The petitioner had filed an application for parole before the Superintendent, Tihar Jail on 11th August, 2021.
2. The said application was not decided and the petitioner filed W.P.(Crl) No. 2087/2021 before this court seeking directions. By order dated 26th October, 2021, said writ petition was disposed of with directions to the State to decide the parole application within a period of four weeks. By order dated 26th November 2021, the

Competent Authority rejected the application for grant of parole and stated that the petitioner may file an SLP from jail itself availing free legal aid.

3. The present writ petition has been filed assailing said order of rejection dated 26th November, 2021.
4. FIR 192/2002 was registered against the petitioner on 17th February, 2002 at PS Kavi Nagar Ghaziabad, U.P. under Section 364 IPC while Section 302 IPC was added subsequently.
5. The petitioner was convicted *vide* judgment dated 28th March, 2008 passed by Ld. ASJ, Patiala House Courts for offence under Sections 364/302/201/34 IPC and *vide* order on sentence dated 30th May, 2008 was awarded life sentence for offences punishable under Sections 302/34 IPC, 10 years RI for offences under Section 364/34 IPC and 5 years RI for offences under Section 204/34 IPC. The sentences were to run concurrently.
6. By judgment dated 02nd April, 2014, appeals filed by the convicts including the petitioner were dismissed by this Court, while the State and the complainant preferred petitions before this Court seeking enhancement of sentence. By judgment dated 06th February, 2015, the Division Bench of this Court enhanced the sentence awarded to the petitioner to life imprisonment which shall be 25 years of actual imprisonment without consideration of remission, and a fine of Rs. 15 Lacs. It was further stipulated that the sentence awarded under Sections 302/34 IPC and 364/34 IPC shall run concurrently while sentence under Sections 201/34 shall run consecutively to the other sentences. It was further directed that the petitioner's periods of admission to Batra Hospital totaling 320 days shall not be counted as period of having undergone imprisonment. A challenge was preferred to the Hon'ble Supreme

Court by the petitioner. The Apex Court upheld conviction *vide* judgment dated 17th August, 2015 and by judgment dated 03rd October, 2016, sentences awarded by this Court were upheld except the consecutive running of sentences imposed under Sections 302/34 IPC and 201/34 IPC.

7. In support of his plea, the petitioner contends that he was released twice on different occasions, i.e. interim bail *vide* order dated 14th January, 2010 for a period of two weeks for the purpose of attending his sister's wedding and parole for a period of 10 days *vide* order dated 16th May, 2014 to attend his brother's marriage. Having applied for regular parole for preferring an SLP, this Court was pleased to grant him custody parole by order dated 30th July, 2015, however the petitioner did not avail the same.
8. At this stage, it has also been pointed out by learned SPP for the State that *vide* order dated 28th April, 2018, the petitioner sought parole for three months which was rejected by this Court as also *vide* order dated 18th June, 2020, an application for parole on the ground of outbreak of Covid-19 pandemic was also rejected by this Court.
9. In these facts and circumstances, the petitioner contends that there is a right to seek parole as per Rule 9.7 of the Guidelines of 2010 and Rule 1208 (viii) of Delhi Prison Rule, 2018 to pursue filing of the SLP. The petitioner has undergone 18 years and 4 months of incarceration and was last released on parole for 10 days in May, 2014 and since then 8 years have elapsed. Since, the records of the case are voluminous running into 2000 pages, the presence of the petitioner with his advocate is required for the preparation and finalisation of SLP. No particular reason has been provided for not availing custody parole granted by this Court for filing SLP in

July, 2015. It is further contented that the conduct of the petitioner has been satisfactory and good, neither is he a habitual offender nor is involved in any other case.

10. Reliance is placed in decision of this Court in ***Neeraj Bhatt v. State***, in W.P.(Crl) no. 3071/2022 decision dated 05th January, 2023, where it has been observed that it a right of a citizen to effectively pursue legal remedy by filing SLP counsel through his own choice and cannot be withheld on the basis of his past conduct or on the ground that free legal aid is available.
11. Reliance is also placed on ***Ved Yadav v State of Nct of Delhi*** in W.P.(Crl) No. 179/2023 where this Court has observed on 01st March, 2023 that the right of a convict to file SLP is a constitutional right and cannot be denied.
12. Learned SPP, vehemently and vigorously objected to the plea of the petitioner *inter alia* on the following grounds:
 - *firstly*, same prayer for seeking parole i.e. filing SLP was declined by this Court by order dated 30th July, 2015 and only custody parole was granted. The petitioner, for reasons unknown, refused to avail of this custody parole;
 - *secondly*, co-convict Vikas Yadav, who opted for a similar plea seeking parole to file SLP, was rejected by this Court and only custody parole was granted for that purpose by order dated 27th March, 2015. It was noted in the said order that “*parole cannot be granted in a routine manner. Conduct of the convict has also to be kept in mind before granting parole. In this case, past conduct of the petitioner more particularly the fact that the complainant and witness have been provide police protection after assessing the threat perception and that the petitioner has aggressive nature, as*

is born out of this conduct, in my view, petitioner is not entitled to blanket parole” ;

- *thirdly*, complainant Ms. Nilam Katara and witness Mr. Ajay Katara, on account of threat to their lives at the hands of the accused persons, have been provided security which is still continuing. This aspect was also adverted to in a decision of this Court while enhancing the period of life sentence;
- *fourthly*, the judgment sought to be impugned in the SLP were passed in 2014/2015 and seeking parole to challenge it now in 2022-2023, was just a ruse since it could have been done much earlier as well;
- *fifthly*, the right to file an SLP is always available from jail and considering that the petitioner has the benefit of full legal team, having pursued their petitions earlier, such consultation would not be indispensable;
- *sixthly*, in 2017, while dismissing the petition for seeking parole, this Court had noted that allegations against the petitioner were serious and grave. The crucial witness and complainant have been provided security as also the petitioner had visited different hospitals without any serious ailments and that most of his family members were involved in criminal case and the instant case was of *“honour killing and there was a possibility of petitioner intimidating or harming those who have deposed against him”*;
- *seventhly*, attention was drawn to an order of this Court dated 18th June, 2020, denying parole even during Covid-19 pandemic wherein it was observed that the case of the petitioner falls within the exception mentioned in the circular of April, 2020, to ease congestion in Delhi jails. The reason for this being that an exception was carved out for those against whom there were

specific directions not to release before a specific period or not to consider remission;

- *eighthly*, reliance is placed on reasons which had weighed with the Division Bench of this Court while enhancing the sentence in 2015 *inter alia* regarding the creation of false *alibis* and absconding, misleading the police, obstruction of justice, loss of crucial evidence, subverting due process, setting up false defence, influencing witnesses, intimidating prosecutors and manipulating Court records.
13. Learned SPP has also relied upon the decision of Hon'ble Supreme Court in ***Krishan Lal v. State of Rajasthan*** 2013 11 SCC 395 where it was held that merely because the convict was granted parole on an earlier occasion cannot be a ground for granting parole later specially after specific directions of the Court had been passed in the meantime directing that a convict would not be entitled to any commutation or premature release. Accordingly, even release of the petitioner on parole on the earlier two occasions could not come to the rescue of petitioner considering that liberty was granted earlier by this Court, prior to enhancing sentence of the petitioner and denying the right of any remission.
14. Submissions have also been presented on behalf of respondent No.2/complainant (Ms. Nilam Katara) supporting and reiterating the submissions made by the learned SPP, but also additionally submitted *inter alia* as under:
- (i) Despite having been granted custody parole in 2015 for filing an SLP, said opportunity was not availed. Furthermore, in 2018, when parole of the petitioner was rejected by this Court, it had been noted that the petitioner

could still be provided custody parole if he intends to file an SLP and it could be so considered on his moving an application for that purpose. Despite having been provided these two opportunities, the petitioner chooses not to avail of custody parole;

- (ii) Pursuant to commission of the brutal murder, provisions of National Security Act (NSA) were invoked against the petitioner and his cousin Vikas Yadav;
- (iii) The victim and witnesses were provided security since 2002 and said security was enhanced in 2019 by Hon'ble Supreme Court. In fact this Court, looking into the serious threats, reviewed security provisions of the victim who was provided security at Dehradun as also a safe accommodation in Delhi;
- (iv) In relation to the parole application in 2017, the complainant had filed a petition under Section 340 Cr.P.C., against the petitioner which is pending adjudication before this Court;
- (v) A Division Bench of this Court while awarding the enhanced sentence to the petitioner had stated, in para 640, that the petitioner and Vikas Yadav have *"utilised the shield of hospital visits and stays in connivance of jail authorities as well as the doctors at the hospital which have visited or were admitted to. They manipulated the systems deliberately and knowingly with impunity without any respect for law or authority"*;
- (vi) In this regard, it is worth mentioning that the period of admission in Batra Hospital totalling 320 days was directed to be not be counted as the period undergone;

- (vii) Para 810 of the said judgment was also pointed out where it is stated by this Court that *“while in jail, they have ruthlessly misused the process of law and had manipulated hospital visits and admission. This conduct of Vikas Yadav and Vishal Yadav manifests that there is no remorse or regret. The jail stay has also had no impact so far as reformation and rehabilitation of these two is concerned”*;
- (viii) Attention was also drawn to it being noted by this Court in 2015 itself that Vikas Yadav and Vishal Yadav had committed almost ten serious offences in custody which had been detailed in para 801 of the judgment;
- (ix) This Court had also noted in 2018, while rejecting the parole plea of the petitioner on this basis, that there was an intention to dispose of the property at Vaishali, Ghaziabad. That on the basis of facts before the Court, it was observed, *“it creates serious doubt if the petitioner has genuine and real intention to sell the property in question to the prospective buyers”*;
- (x) The victim and witness have been provided security till date and pursuant to 07th May, 2019, seven PSO's have been allocated to witness Ajay Katara while security and threat was a continuing issue;
- (xi) As regards the family of the petitioner, it was submitted that the sister was settled in UK, uncle Mr. D.P. Yadav had business interests abroad, the brother had also moved an application regarding migration and therefore the petitioner was a serious flight risk;
- (xii) Reliance was placed on the decision of the Hon'ble Supreme Court in *Asfaq v. State of Rajasthan* 2017 (15)

SCC 55 pointing out to the observations of the Apex Court, *inter alia*, in para 21 which is extracted under for ready reference:

“21... To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time being under the furlough leave granted to him by way of a measure of penal reform.” (emphasis supplied)

15. Furthermore, learned counsel for the petitioner in a rejoinder submitted that the parole was sought for a limited purpose and custody parole was not meaningful since the record was voluminous; the main accused is Vikas Yadav is a different person than the petitioner being his maternal cousin and graver issues are related to the former rather than petitioner; threats in question, which had been adverted to, were decades old and not recent; delay in filing in SLP would be a point of discretion to be decided by the Hon'ble Supreme Court; since security has already been provided, the perception of threat and harm would not be relevant;

as per *Asfaq (supra)* conviction in a serious and heinous crime cannot be the reason for denying parole *per se*; the submission regarding invocation of (NSA) was baseless and does not relate to the petitioner; the application for migration is related to his brother and not to the petitioner; the application under Section 340 Cr.P.C. was related to a property issue and was not criminal in character ; reiterating past conduct as noted in the orders of the Court was only to create an adverse perception and in any event, was related to the main accused.

16. Having considered the respective contentions of the parties, this Court has taken specific note of the following relevant aspects to address the plea of the petitioner for grant of parole. The fact that the petitioner was indeed granted custody parole in 2015 itself but he did not avail it for reasons not specified or articulated, does not work to the advantage of the petitioner. Even in 2018 when this Court while rejecting parole of the petitioner specifically noted that the petitioner would be granted custody parole for filing an SLP and an application in that regard could be moved, the opportunity granted was not availed on that stage as well, which also does not work to the advantage to the petitioner. Rejection of parole by this Court in June 2020, during the Covid-19 pandemic relying on the exception carved out in the circular of 2020 regarding the release of prisoners and excluding those whose sentence was not to be considered for remission, shows that the petitioner's case was indeed exceptional. Past conduct (*pre-trial, during investigation, during trial and in custody*) of the petitioner as well as that of co accused Vikas Yadav, as pointed out in the decision of this Court in 2015 was serious, exceptional, acute and grave, to say the least, and cannot be ignored or taken lightly for

the purpose of considering this plea. The petitioner is not precluded from pursuing his remedy to file an SLP before the Hon'ble Supreme Court, irrespective that it is 8 years after the decision that he wishes to assail. Consistent refusal to accept custody parole for this purpose does not work to the advantage of the petitioner since it is not as if there is a denial in exercising a constitutional right, but rather to calibrate it and allow it along with safeguards which are necessary for securing life, liberty and protection of the victim and witnesses. The petitioner's contention of denial of a constitutional right in context of the plea for parole, therefore, has to be appreciated, viewed, weighed, sifted and winnowed in this light and not viewed in isolation.

17. In the considered opinion of this Court, it would not be prudent to assess the plea of the petitioner as a simple segregated isolated plea for filing the SLP and completely ignore and overlook the past conduct of the petitioner, which is well documented in previous orders/judgments of this Court. The Court cannot turn a blind eye to these facts and circumstances.
18. In light of the above discussion and assessment, the petition is dismissed. Pending applications (if any) are disposed of as infructuous.
19. Order/judgment be uploaded on the website of this Court.

ANISH DAYAL, J.

MAY 02, 2023/RK