



2023:DHCLSC:7751



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

% *Date of decision: 19th October, 2023.*

+ **W.P.(CRL) 3073/2022**

JAMAHIR @ JAWAHAR PASWAN

..... Petitioner

Through: Mr. Rohan J. Alva, Advocate
(DHCLSC)

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr.Amit Peshwani, Advocate for
Ms.Nandita Rao, ASC (Crl.) for the
State.

SI Manjit Singh, PS Kirti Nagar.

+ **W.P.(CRL) 872/2023**

RAJ KUMAR

..... Petitioner

Through: Mr.Zeeshan Diwan and Mr.Ahmed
Faraz, Advocate (DHCLSC)

versus

STATE OF (N.C.T.) OF DELHI

..... Respondent

Through: Mr.Sanjay Lao, Standing Counsel
(crl.) with Ms.Priyam Agrawal,
Advocate.

SI Manjit Singh, PS Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petitions have been filed seeking grant of parole for the petitioners in the case arising out of FIR No.7/2012 under Sections

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376/377/302/201/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Kirti Nagar.

2. The petitioners were convicted of the offences under Sections 376(2)(g)/302/377/363/201/34 of the IPC and sentenced to undergo rigorous imprisonment for life by the Sessions Court. The criminal appeal filed on behalf of the petitioners was dismissed by a Division Bench of this Court *vide* order dated 18th May, 2022.

3. The petitioners have now moved the present petitions for grant of parole to enable them to file SLPs before the Hon'ble Supreme Court since their appeals against conviction were rejected by this Court as well as for re-establishing social ties.

4. The petitioners are in custody for the last about 12 years. Their applications seeking parole were rejected by the competent authority citing Rule 1211(VI) of the Delhi Prisons Rules, 2018, which provides that if the petitioners are convicted of murder after rape, parole will not be granted except if in the discretion of the competent authority special circumstances exist for grant of parole.

5. In the Status Report filed on behalf of the State, the grant of parole is objected on the ground of the gravity of the offence since the petitioners have been convicted of a heinous offence involving murder after committing rape.

6. Counsels appearing for the petitioners submit that seriousness of the offence cannot be a ground to deny grant of parole to the petitioners. In this regard, reliance has been placed on the judgments of the Co-ordinate Bench of this Court in W.P.(Crl.) 996/2023 dated 12th September, 2023 titled ***Rahul Gupta v. State (NCT of Delhi)*** and ***Rakesh v. State of NCT of Delhi***,

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(2022) SCC OnLine 1346.

7. I have heard the counsels for the parties and perused the material on record.

8. At the outset, reference may be made to Rule 1211 of the Delhi Prisons Rules, 2018:

*“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;*

xxx

xxx

xxx

VI. If the prisoner is convicted of murder after rape;”

A bare perusal of the aforesaid Rule makes it clear that the competent authority has the power to grant parole in case ‘special circumstances’ exist for grant of such parole.

9. The Supreme Court in the judgment of *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55, has held that conviction in a serious and heinous crime cannot be the sole reason for denying parole to a prisoner. The relevant observations are set out below:

*“9. We may state at the outset that the reason because of which the High Court dismissed the writ petition filed by the appellant herein is not an apposite one and does not meet the test of law. **The petition is dismissed only on the ground that the appellant is convicted in a case of serious and heinous crime and, therefore, parole cannot be claimed as a matter of right. As per the discussion that would follow hereinafter, the conviction in a serious and heinous crime cannot be the reason for denying the parole per se...***

xxx

xxx

xxx

22. Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person

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for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity, etc.”

10. The Supreme Court in *Asfaq (supra)* has laid down the following guidelines for grant of parole to a convict:

“13. As far as “regular parole” is concerned, it may be given in the following cases:

- (i) serious illness of a family member;*
- (ii) critical conditions in the family on account of accident or death of a family member;*
- (iii) marriage of any member of the family of the convict;*
- (iv) delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;*

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- (v) *serious damage to life or property of the family of the convict including damage caused by natural calamities;*
- (vi) *to maintain family and social ties;*
- (vii) *to pursue the filing of a special leave petition before this Court against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be."*

11. A Co-ordinate Bench of this Court in ***Rakesh (supra)***, while granting parole to the petitioner therein, who was sentenced to undergo imprisonment for a period of 14 years for an offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012, on the ground of enabling him to file an SLP before the Supreme Court, had observed 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 CrPC 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, recognises that regular parole under Rule 1208 can be granted to a convict, to pursue filing of a special leave petition before the Supreme Court."

12. Another Co-ordinate Bench of this Court in ***Rahul Gupta (supra)***, relying upon ***Rakesh (supra)***, granted parole to a convict sentenced to undergo life imprisonment for an offence under Sections 364A/302/201/34 of the IPC, by holding that filing an SLP before the Supreme Court

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constitutes as a 'special circumstance'.

13. In view of the legal position laid down by the above cited decisions, I am satisfied that parole cannot be denied to the petitioners merely because they have committed a heinous offence. The bar contained in Rule 1211 of the Delhi Prisons Rules, 2018 is not absolute. The convict would be entitled to the grant of parole if he is able to show 'special circumstances', as contemplated by the aforesaid Rule. Filing of SLP before the Hon'ble Supreme Court shall be considered as a 'special circumstance' in terms of Rule 1211 of the Delhi Prisons Rules, 2018.

14. At the stage of parole, factors such as period of incarceration, conduct inside jail, involvement in other criminal cases, among others may be considered. As per the Nominal Roll on record, both the petitioners have spent approximately twelve years in custody. Their conduct in jail has been satisfactory and they have not been involved in any other criminal cases.

15. As per the Status Report filed on behalf of the State, the addresses of both the petitioners in Bihar have been verified.

16. Considering the aforesaid facts and circumstances, in my considered opinion, both the petitioners are entitled to the grant of parole. However, taking into account Note (2) of Rule 1212 of the Delhi Prison Rules, 2018, which provides that two co-convicts in the same case cannot be simultaneously released on parole, the petitioners would have to be released one after the other.

17. Since the petitioner in W.P.(CRL) 872/2023 had applied for parole earlier, he would be entitled to be released on parole at the first instance. Accordingly, it is directed that the petitioner in W.P.(CRL) 872/2023 be released on parole for a period of four weeks from the date of release, upon

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furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Jail Superintendent and further subject to the following conditions:

- i. During the period of parole, the petitioner shall report to the Station House Officer (SHO), Police Station Dhangayi, Gaya, Bihar, physically twice a week.
- ii. The petitioner shall also provide the SHO, Police Station Dhangayi, Gaya, Bihar with his mobile/telephone number(s) which shall be kept in working condition at all times and shall not switch off or change the mobile number(s) without prior intimation to the SHO concerned. The mobile location shall be kept on at all times.
- iii. The petitioner shall not leave the country during the period of parole without the prior permission of this Court.
- iv. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family.
- v. The petitioner is directed to surrender before the jail authorities immediately upon the expiry of the period of parole.

18. Upon the surrender of the petitioner in W.P.(CRL) 872/2023, the petitioner in W.P.(CRL) 3073/2022 shall be released on parole for a period of four weeks from the date of release on the same terms and conditions. However, the concerned police station in the case of the petitioner in W.P. (CRL) 3073/2022 is stated to be Police Station Barahi, Gaya, Bihar. Therefore, the conditions no. 'i.' and 'ii.' above shall stand modified to the aforesaid extent.

19. Copy of this order be sent to the Jail Superintendent for information

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and necessary compliance.

20. The petitions stand disposed of in terms of the above.

AMIT BANSAL, J.

OCTOBER 19, 2023

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