



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

Reserved on : 11.07.2023

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Pronounced on : 04.09.2023

+ **W.P.(CRL) 1009/2023**

SOHRAB

..... Petitioner

Through: Ms. Vidisha, Advocate (*through video conferencing*).

versus

STATE GNCT OF DELHI

..... Respondent

Through: Mr. Sanjay Lao, Standing Counsel for the State with Ms. Priyam Aggarwal, Mr. Abhinav Kumar Arya and Mr. Shivesh Kaushik and with Insp. Sachin Kumar Verma, PS Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By way of this petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C., the petitioner is seeking the following reliefs:-

"a) Issue a Writ of Mandamus or any other Writ, directing the respondent to release the petitioner in parole for a period of 12 weeks on the ground of pursuing filing of SLP before the Hon'ble Supreme Court against the judgment dated 06.01.2023 (2023/DHC/000107) of this Hon'ble Court;



b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. I have heard the learned counsel for the petitioner, learned Standing Counsel for the State, perused the status reports filed by the State and also, perused the records of this case.

3. Learned counsel for the petitioner submitted that the petitioner vide judgment dated 15.02.2018 was convicted for the offences under Section 396/412 IPC and vide order on sentence dated 22.03.2018, he was awarded life imprisonment. She further submitted that the appeal of the petitioner was dismissed by this Hon'ble Court vide judgment dated 06.01.2023 and in the view of the said Judgment, the petitioner had applied for grant of parole before the respondent authority in the end of January, 2023, however, the same has not been decided by the respondent authority even till the date of filing of the present petition, and the petitioner is thus constrained to file the present Writ petition. She submitted that the petitioner has to engage a competent advocate of his choice to file the SLP while also managing funds for the expenses to be incurred in the prospective proceedings before the Hon'ble Supreme Court.

4. Ld. counsel for the petitioner submitted that the petitioner has undergone more than 11 years 8 months and 16 days and has been enlarged on bail only once by this Hon'ble Court vide order dated 17.12.2021, whereby his sentence was suspended on an interim basis for a period of 4 weeks. She submitted that the petitioner has never misused the liberty granted to him vide the above-mentioned order, surrendered on time without



any delay and no adverse report has been filed by the jail authorities with respect to the conduct of the petitioner inside the prison. Lastly, she submitted that since the appeal of the petitioner has been dismissed by this Hon'ble Court vide judgment dated 06.01.2023, the petitioner intends to file a Special Leave Petition before the Hon'ble Supreme Court and, therefore, the petitioner may be granted parole for a period of twelve weeks for the said purpose.

5. On the other hand, learned Standing Counsel for the State has vehemently opposed the present petition and has argued on the lines of the status reports. He further submitted that the Social report and criminal report of the petitioner have been obtained from Police Station Cantt, Lucknow, UP and as per the reports, the petitioner is a history sheeter and gang member of the gang of Saleem in PS Cantt, Lucknow, UP. He further submitted that from Tihar Jail itself, the petitioner and his associates committed the crime by threatening victim and extorted money vide FIR No. 65/2022 under Sections 386/506/120B IPC; P.S- Thakur Ganj, Lucknow, UP. Ld. Standing Counsel for the State has also expressed his apprehensions that the petitioner may jump the parole if he is released.

6. Attention of this Court has been drawn by Ld. Standing Counsel for the State to the fact that the application filed by the petitioner for release on parole before the competent authority i.e., Deputy Secretary, Home, NCT of Delhi has already been rejected on 22.06.2023. He states that that there is no illegality in the order passed by the said competent authority because as per



the nominal roll, the present petitioner is involved in 8 other cases and thus, he is not entitled to parole in view of Rule 1211 of Delhi Prison Rule, 2018.

7. Rule 1211 of Delhi Prison Rule, 2018 has been reproduced hereunder for ready reference:-

"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 (viii) xxx xxx

(ix) Prisoners who are convicted for Dacoity with murder."

8. Perusal of Order dated 22.06.2023 shows that though the special circumstances which exist for grant of parole were to be considered by the competent authority i.e., Deputy Secretary, Home, NCT of Delhi, however, the impugned order only mentions that '*grant of parole of said convict on the grounds of filing SLP in Supreme Court, being generic, does not attract exceptional conditions to qualify relief under rule 1211 of Delhi Prison Rules-2018*'.

9. This court is of the view that the right of a citizen to avail a legal remedy in the Honb'le Supreme Court which is the final court of this country, cannot be denied to a prisoner merely on such grounds. The petitioner has a right to engage a competent advocate of his choice for filing the SLP before the Hon'ble Supreme Court and this court has no intention of revoking the same. Reliance can also be placed upon the judgments of the coordinate bench of this court in *Ved Yadav vs. State of NCT of Delhi [W.P.*



(CRL.) 179/2023, decided on 01.03.2023] and *Neeraj Bhatt vs. The State (Govt. of NCT) of Delhi [W.P. (CRL.) 3071/2022, decided on 05.01.2023]*.

10. In *Asfaq v. State of Rajasthan [(2017) 15 SCC 55]*, the Hon'ble Supreme Court has observed and held as follows:-

“19) 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 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.

20) There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it



does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. {See – Sunil Batra (II) v. Delhi Administration³, Maneka Gandhi v. Union of India and Another⁴, and Charles Sobraj v. Superintendent Central Jail, Tihar, New Delhi⁵ }.”

11. It is also pertinent to mention that the present petitioner has undergone more than 11 years 8 months and 16 days in judicial custody, has been enlarged on interim bail only once by this Hon'ble Court during his entire period of custody and the conduct of the petitioner is also satisfactory.

12. Therefore, keeping in view the entire facts and circumstances of the case, this Court considers it apposite to allow the present petition. Accordingly, the petition is allowed and petitioner is granted parole for a period of two weeks, from the date of release, on the following conditions:

- (i) The Petitioner shall furnish personal bond in the sum of Rs.25,000/- with two sureties in the like amount to the satisfaction of the concerned Jail Superintendent;
- (ii) The petitioner shall provide his mobile phone number to the concerned Jail Superintendent and SHO concerned at the time of release, which shall be kept in working condition at all times;
- (iii) The petitioner shall not leave the NCT of Delhi without the prior permission of this Court and shall reside at the given address as per prison records;



(iv) The petitioner shall present himself before the S.H.O., P.S.: Krishna Nagar every third day between 11:00 AM and 11:30 AM to mark his presence. However, he shall not be kept waiting for long for this purpose;

(v) The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of 2 weeks from the date of his release.

13. Therefore, the present petition along with pending application, if any, is disposed of accordingly.

14. A copy of this order be sent forthwith to concerned Jail Superintendent and SHO, Krishna Nagar, through electronic mode.

RAJNISH BHATNAGAR, J

SEPTEMBER 04, 2023/

भारतमेव जयते