



2023:DHC:7278



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

% **Reserved on: 29.08.2023**

Pronounced on: 06.10.2023

+ **W.P.(CRL) 1065/2023**

MOHD. GULFAM

..... Petitioner

Through: Mr. Kunal Malhotra, Ravinder
Gaur and Mr. Lalit Choudhary,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sanjay Lao, Standing
Counsel for the State with Mr.
Priyam Aggarwal, Mr.
Abhinave Kumar Arya and Mr.
Shivesh Kaushik, Advocate
with SI Abhishek, P.S.Khajuri
Khas.

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 of the Code of Criminal Procedure, the petitioner is seeking parole for a period of 03 months for the purpose of filing the SLP in FIR No.191/2011, under Sections 302/201/363 IPC, registered at Police Station Khajuri Khas.

2. It is submitted by the counsel for the petitioner that parole of the petitioner has been denied by the respondent vide impugned order dated 01.03.2023 stating that convict can file SLP from jail itself. It is



further submitted by the counsel for petitioner that respondent has failed to appreciate the fact that the petitioner has already undergone incarceration of more than 8 years since then the conduct of the petitioner remains good and satisfactory nothing adverse has been reported against him. It is further submitted that as per Rule 1210 of Delhi Prison Rules 2018, petitioner is fully eligible to seek parole for filling SLP before the Hon'ble Supreme Court of India. It is further submitted by counsel for petitioner that this Hon'ble Court has observed, in W.P. (Crl.) No. 1155/2013 dated 23.07.2013, *"it is trite to say that there are number of judicial pronouncements in which it has been held that the petitioner is entitled to parole in order to prosecute proceedings before a higher court."*

3. On the other hand, it is submitted by the learned standing counsel appearing for the state while vehemently opposing the present petition that the conduct of petitioner is unsatisfactory and also a punishment ticket dated 04.08.2020 has been issued against the petitioner for tempering with jail record. It is further submitted that if petitioner is released on parole, there are chances of petitioner's jumping the parole.

4. In the instant case, the petitioner was awarded sentence vide order dated 31.01.2019 as rigorous imprisonment for life and fine of Rs. 1 Lakhs for offence under Section 302 IPC, rigorous imprisonment for 5 years and fine of Rs. 10,000/- for offence under Section 201 IPC, rigorous imprisonment for 10 years and fine of Rs. 20,000/- for offence under Section 364 IPC. Further, the petitioner has undergone more than 8 years and 2 months in judicial custody. Moreover, the



presence of petitioner with his advocate is required for the preparation and finalisation of SLP.

5. A Perusal of status report dated 17.08.2023 filed by the State shows that family members have been residing at C 136 Gali No.6 in Sri Ram Colony Khajuri Khas. As per the nominal roll, the conduct of the petitioner has been satisfactory and good except punishment dated 04.08.2020 for tempering with jail record register but thereafter nothing adverse has been reported against him. Furthermore, neither is the petitioner a habitual offender nor he is involved in any other case.

6. In *Neeraj Bhatt V. State in W.P. (Crl.). 3071/2022 dated 5th Jan. 2023*, a co-ordinate Bench of this court while granting parole to the petitioner has observed that it is 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.

7. Reference can also be taken from the order passed in *Ved Yadav V. State of NCT of Delhi in W.P. (crl.) No. 179/2023 dated 01.03.2023*, whereby a co-ordinate Bench of this Court has observed that the right of convict to file SLP is a constitutional right and cannot be denied.

8. Keeping in view the entire facts and circumstances and the observations made by the co-ordinate Bench of this Court in *Neeraj Bhatt* (supra) and *Ved Yadav* (supra), and also the fact that personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case and in the instant case the petitioner has



undergone more than 8 years of imprisonment, therefore, I am inclined to release the petitioner on parole. Accordingly, the petition is allowed and petitioner is granted parole for a period of 4 weeks from the date of his release on following conditions:

- (i) The Petitioner shall furnish personal bond in the sum of Rs.20,000/- with two sureties in the like amount to the satisfaction of the 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 address as per prison records;
 - (iv) The petitioner shall present himself before the S.H.O. P.S. Khajuri Khas every third day between 11:00 AM and 11:30 AM to mark his presence. However, he will not be kept waiting longer than an hour for this purpose;
 - (v) The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of 4 weeks from the date of his release.
10. Therefore, the present petition is disposed of accordingly.
11. A copy of this order be sent forthwith to concerned Jail Superintendent and SHO, P.S. Khajuri Khas, through electronic mode.

RAJNISH BHATNAGAR, J

OCTOBER 06, 2023/_p