



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

%

Reserved on: 07.08.2023

Pronounced on: 26.09.2023

+

W.P.(CRL) 1153/2023

OMID HUSSAIN KHIL @ UMED MILAD Petitioner

Through: Mr. Sarthak Maggon, Adv.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Ms. Nandita Rao, ASC for the State.

Insp. Amarjeet Singh,

P.S.H.Nizamudin

Mr. Amit Tiwari, Sr. Panel

Counsel for R/UOI

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J

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

- “a) Issue a Writ in the nature of mandamus directing the Respondents to release the Petitioner on parole for a period of eight weeks for filing Special Leave Petition before the Hon’ble Supreme Court, for seeking specialized opinion in respect of medical ailments and for maintenance of social ties, and/or*
- b) Pass any other or further orders/directions as may be deemed fit by this Hon’ble Court in bonafide interest and furtherance of justice.”*

2. Heard.



3. Records perused.

4. Learned counsel for the petitioner submitted that the petitioner vide judgment dated 28.09.2021 was convicted for the offences under Section 302 IPC and vide order on sentence dated 05.10.2021, he was awarded life imprisonment. He further submitted that till now the petitioner has undergone a period of 12 ½ years. He further submitted that due to this prolonged period of continuous incarceration, the petitioner has been suffering from grave mental health repercussions including severe medical ailments like insomnia, gastrological issues, sever migrane and neurological issues. He further submitted that this Hon'ble Court vide order dated 30.05.2023 granted one day custody parole to the petitioner for regularising his stay in India being a foreign national. He further submitted that since the appeal of the petitioner was dismissed by this Hon'ble Court vide judgment dated 20.09.2022, the petitioner intends to file a Special Leave Petition before the Hon'ble Supreme Court and, therefore, the petitioner may be granted parole for eight weeks for the said purpose.

5. On the contrary, learned ASC for the State, while vehemently opposing the present petition, submitted that the petitioner is a foreign national and has committed a grave offence for which he has been convicted. She further submitted that the jail superintendent vide order dated 13.04.2023 has already dismissed the parole application preferred by the petitioner on the ground that the petitioner is a foreign national and the parole could not be granted to him due to gravity of offence, moreover, the address given by the petitioner for his stay if in



case he is released on parole was unverifiable. She further submitted that in such circumstances petitioner may abscond if granted parole.

6. In *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55, the Hon'ble Supreme Court has observed that gravity of offence cannot be a ground to deny parole. The relevant portion of the above said judgment reads 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 }.

(emphasis supplied)

7. Considering the above observation of the Hon'ble Supreme Court, this Court is of the opinion that every individual possesses the right to effectively pursue their legal recourse in the ultimate court of justice within the nation, accomplished by submitting a Special Leave Petition (SLP) through a chosen legal representative. This is an invaluable entitlement that should not be denied solely based on the severity of the offense or the availability of free legal assistance, even if the SLP can be filed from jail itself. The entitlement of an individual to access a lawful solution in the ultimate court of the country, often seen as a final glimmer of hope, cannot be refused for such reasons. It goes without saying that the act of utilizing the legal recourse available in the highest court of the land is a privilege bestowed upon the petitioner, and this court has no intention of revoking that right.

8. It is also pertinent to note here that the present petitioner has remained in judicial custody since the day of his arrest and is continuously in the jail for around twelve years and six months.

9. Therefore, keeping in view the entire facts and circumstances this Court is of the opinion that the case of the petitioner is suitable for granting parole. Accordingly, the petition is allowed and the petitioner is granted parole for a period of three (3) 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 one surety in the like amount to the satisfaction of the concerned Jail Superintendent;
 - ii. The petitioner shall not leave the NCT of Delhi without the prior permission of this Court and he shall reside at the address which shall be provided by the petitioner at the time of his release;
 - iii. The petitioner shall deposit his passport with the jail superintendent if not already deposited.
 - iv. The petitioner shall provide his mobile phone number to the concerned Jail Superintendent and to the S.H.O. of the local area at the time of his release, which shall be kept in working condition at all times;
 - v. The petitioner shall present himself before the S.H.O. of the local area 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;
 - vi. The petitioner shall furnish a copy of the SLP filed in the Supreme Court to the Superintendent Jail at the time of surrendering. A copy of the SLP shall also be placed on record before this Court before surrendering.
 - vii. The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of 03 (three) weeks from the date of his release.
10. Accordingly, the present petition along with pending application, if any, stands disposed of.



11. A copy of this order be sent forthwith to concerned Jail Superintendent, through electronic mode, who shall thereafter send the same to SHO of the local area as per the address which shall be provided by the petitioner.

RAJNISH BHATNAGAR, J

SEPTEMBER 26, 2023/p