



2023:DHC:6983



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

% **Reserved on: 29.08.2023**

Pronounced on: 25.09.2023

+ **W.P.(CRL) 2285/2023**

RAJA RAM @ CHOTA RAJA

..... Petitioner

Through: Mr. Arjun Malik, Advocate.

versus

STATE OF 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, Advocates SI Sanjeet Kumar, P.S.Mandawali.

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 relief:-

“a. Issue a writ in the nature of Certiorari quashing the Order no.F.18/229/2014/HG/1788 dated 16.06.2023 passed by the Respondent; and

b. Issue a writ in the nature of mandamus directing the respondent to release the petitioner on parole for a period of 4 weeks; or”

2. It is submitted by the learned counsel for the petitioner that



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petitioner was denied parole vide impugned order dated 16.06.2023 only on the ground that the petitioner did not surrender when he was released on emergency parole on 23.05.2020 for a period of 8 weeks, which was further extended time to time due to COVID-19 and that as per nominal roll, the jail conduct of the accused was unsatisfactory. It is further submitted that despite the petitioner continuously enquiring about the date of surrender from the jail authority, he was informed that he need not surrender as his emergency parole was being extended and no such intimation was given to the petitioner with regard to his date of surrender. It is further submitted that petitioner is in judicial custody since 30.06.2008 and has undergone 13 years and 7 months in custody and has earned approximately 2 years of remission. It is further submitted that the petitioner has a family to support and for their subsistence he used to send money by working as “Wasing Sahayak” in the jail.

3. Learned counsel for the petitioner has relied upon the following orders passed by this Court:

- ***Ramjani v. State (N.C.T.) of Delhi in W.P. (CRL) 2138/2022;***
- ***Vinod @ Vinoda vs. The State (Govt of N.C.T. Delhi) in W.P. (CRL) 89/2023.***

4. On the other hand, learned Standing Counsel opposes the present petition submitting that when the petitioner was released on emergency parole, he did not surrender on due date and jumped the parole and was later arrested on 09.07.2021 for which a punishment



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ticket against him was issued. He further submitted that petitioner's conduct while incarcerated has been unsatisfactory, leading to multiple disciplinary actions taken by the prison authorities.

5. In the present case, a perusal of the status report filed by the State shows that the petitioner was granted emergency parole on 23.05.2020, and it was periodically extended owing to the COVID-19 epidemic until 14.02.2021, however, he failed to surrender before jail authorities on time and jumped the emergency parole thereafter he was arrested on 09.07.2021. As per nominal roll dated 04.08.2023, the petitioner has undergone about 13 years, 11 months and 03 days actual incarceration and he has also earned about 1 year 9 months and 1 day remission. As far as the contention of learned Standing Counsel on non surrender of the petitioner on time is concerned, the counsel for the petitioner stated that petitioner was not given intimation about the date on which he was supposed to surrender before the jail authorities. Moreover, no document has been placed by the State to show that the petitioner was informed about his date of surrender and despite that he did not surrender.

6. Reliance can be placed on the judgment passed by the Hon'ble Supreme Court in ***Asfaq v. State of Rajasthan***, (2017) 15 SCC 55. The relevant portion is reproduced hereunder:

"19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands



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that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behavior shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments."

7. Keeping in view the entire facts and circumstances; the view taken by the Hon'ble Supreme Court in ***Asfaq v. State of Rajasthan***, (2017) 15 SCC 55; the fact that personal freedom is a priceless fundamental right which should only be restricted when necessary in light of the unique facts and circumstances of the case and as the petitioner has undergone 13 years of imprisonment, therefore, this Court is of the view that petitioner is entitled to be released on parole. Accordingly, the petition is allowed and petitioner is granted parole for a period of 4 weeks on 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 Jail Superintendent.



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- (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.: Mandawali, Delhi 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 four weeks from the date of his release.

8. Therefore, the present petition is disposed of accordingly.

9. A copy of this order be sent forthwith to concerned Jail Superintendent and SHO, P.S. Mandawali, through electronic mode.

RAJNISH BHATNAGAR, J

SEPTEMBER 25, 2023/p