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

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Reserved on: 21.12.2023
Pronounced on: 22.12.2023

+ **W.P.(CRL) 3081/2023**

VINOD KUMAR

..... Petitioner

Through: Mr. Piyush Bhardwaj & Mr. Rajat
Rajoria Singh, Advocates.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Jasraj Singh Chhabra & Mr.
Amit Peswani, Advocates for Ms.
Nadita Rao, ASC (Criminal) for
the State with Inspector Yogendra
Kumar, P.S.: Shalimar Bagh.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking issuance of writ in the nature of certiorari to quash the rejection order no. F.18/26/2023/HG/2919 dated 09.10.2023, and issuance of writ in the nature of mandamus directing the respondent to release the petitioner on



parole for a period of three (03) months.

2. Brief facts of the case are that the petitioner was arrested in FIR bearing no. 154/2016, registered at Police Station, Punjab Bagh, Delhi under Sections 302/304 of Indian Penal Code, 1869 ('IPC') and Sections 25/27/54/59 of Arms Act. He was convicted by the learned Trial Court, and *vide* order on sentence dated 08.07.2022, he was sentenced to undergo rigorous imprisonment for life for offence under Section 302 of IPC. He was further sentenced to undergo rigorous imprisonment for four years for offence under Section 27 of Arms Act and rigorous imprisonment for one year for offence under Section 25 of Arms Act. The appeal against conviction i.e. Crl. Appeal No. 419/2022 filed by the petitioner was dismissed by this Court *vide* judgment dated 18.04.2023.

3. The petitioner is currently lodged in Central Jail No. 03, Tihar, Delhi, and seeks parole on the ground that he wants to file Special Leave Petition ('SLP') before the Hon'ble Apex Court, assailing the orders/judgments *vide* which he was convicted and his conviction was upheld, in the present FIR.

4. Learned counsel for the petitioner submits that the petitioner had preferred an application for grant of parole before the competent authority, however, the same was rejected *vide* order no. F.18/26/2023/HG/2919 dated 09.10.2023. It is argued that the order of rejecting the parole application of the petitioner is totally arbitrary and has been passed without any application of mind, in a mechanical



manner. It is stated that the conduct of the petitioner inside the custody has never been found objectionable in the last five years by the jail authorities, and last one year conduct of the petitioner is also satisfactory. It is also argued that it is the constitutional right of every convict to be released on parole in order to prosecute proceedings before a higher court, as held by this Court in several judgments. Therefore, it is prayed that present petition be allowed.

5. Learned counsel appearing on behalf of the State, on the other hand, argues that the petitioner is a habitual offender and is involved in several other criminal cases. It is also stated that two punishments were given to the petitioner in the year 2017, due to which his overall jail conduct is unsatisfactory, and therefore, he be not released on parole.

6. This Court has heard arguments addressed on behalf of both the parties, and has perused the material placed on record.

7. The application filed by the petitioner for release on parole was rejected *vide* order dated 09.10.2023, by the respondent/competent authority, on the following two grounds:

“1. As per nominal roll, the overall jail conduct of the above said convict is reported to be unsatisfactory.

2. He may file SLP from jail itself, where free legal aid facility is available to all prisoners.”

8. In the present case, the petitioner has been in judicial custody since 21.02.2016 i.e. for a period of about 07 years and 09 months. This Court takes note of the fact, that as per nominal roll, only two



punishments have been awarded to the present petitioner, i.e. first punishment in November, 2016 and thereafter, in May, 2017. However, the petitioner had also been granted interim bail by the learned Trial Court in January, 2017. Further, except these two incidents wherein punishment was awarded to the applicant herein, the nominal roll does not find mention of any misconduct on the part of the petitioner, after May, 2017 till date i.e. for the last more than six years. Rather, the nominal roll dated 28.11.2023 mentions that the jail conduct of the petitioner during last one year was satisfactory.

9. Rule 1208, of the Delhi Prison Rules 2018, provides the following grounds on which an application filed by the prisoner can be considered by the competent authority:

“**1208.** Subject to fulfillment of conditions stipulated in Rule 1210 below, it would be open to the Competent authority to consider applications for parole on the grounds such as :-

- 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 legally wedded wife of the convict.
- v. Serious damage to life or property of the family of the convict including damage caused by natural calamities.
- vi. Sowing and harvesting of crops.
- vii. To maintain family and social ties.
- viii. To pursue the filing of a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be...”



10. Thus, Rule 1208 provides filing of SLP before the Hon'ble Apex Court as one of the grounds for seeking grant of parole. Rule 1210 prescribes criteria to be eligible for release on parole and undoubtedly, the present petitioner fulfills the said criteria. Thereafter, Rule 1211 also provides that in certain cases as mentioned in the said rule, the competent authority will grant parole only in cases of special circumstances, and perusal of the same reveals that the case of petitioner herein also does not fall within the parameters of said rule.

11. Therefore, this Court is of the opinion that the order impugned herein was an order passed in a mechanical manner, without appreciating the contents of nominal roll and the rules for grant of parole under the Delhi Prison Rules, 2018.

12. This Court is unable to comment as to whether the nominal roll or other documents were placed before the competent authority for the purpose of passing any order on the application for grant of parole, since it has escaped the notice of the competent authority that the behaviour of the present petitioner was satisfactory for last six years, as per nominal roll, and no major or minor punishment had been awarded to him after May 2017, and therefore, even as per Prison rules, he was entitled to grant of parole, for filing of SLP before the Hon'ble Apex Court.

13. Courts have consistently emphasized that the right of a convict to file a Special Leave Petition challenging the dismissal of their criminal appeal by a High Court is crucial right. This right cannot be denied



based on the availability of free legal aid in jail and the possibility of filing the SLP from the jail premises. Given that the petitioner's sole recourse for assailing his conviction now rests with the Hon'ble Apex Court, it is important to afford him the opportunity to pursue his legal remedy by filing the SLP through his chosen counsel.

14. Considering the aforesaid facts and circumstances, this Court is inclined to grant parole to the petitioner for a period 04 weeks from the date of his release on the following conditions:-

- i. The petitioner shall furnish a personal bond in the sum of Rs.15,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
- ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.
- iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
- iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
- v. The petitioner shall furnish a copy of the SLP filed before the Hon'ble Supreme Court to the Jail Superintendent at the time of surrendering. A copy of the SLP shall also be placed on record



before this Court.

vi. The period of parole shall be counted from the day when the petitioner is released from jail.

15. With the above terms, the present writ petition is disposed of.

16. A copy of this order be sent by the Registry to the Jail Superintendent concerned.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 22, 2023/at