

30th January,
2024
(AK)
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W.P.A 28651 of 2023

Aktar alias Aktar Hossain Alias Palowan
Vs.
State of West Bengal and others

Mr. Giasul Islam

...for the petitioner.

Mr. Suman Ghosh

Mr. Siddhartha Ghosh

...for the State.

1. Learned counsel for the petitioner submits that the petitioner has been in incarceration for more than eleven years.
2. The petitioner sought for parole of thirty days on the ground of terminal medical illness of his 73 year old mother, which was refused by the respondent authorities, prompting the present writ petition.
3. Learned counsel places reliance on the judgment of *Asfaq vs. State of Rajasthan and others* reported at (2017) 15 SCC 55. In the said judgment, the Supreme Court reiterated the need for a prisoner to maintain family and social ties and social contact.
4. It was observed by the Supreme Court that a humanistic approach is to be taken towards those lodged in jails, affording them an opportunity to solve their personal and family problems and to

enable them to maintain their links with society, which would also be in the vested interest of the people of the country, since the offenders are prepared for successful re-entry into society.

5. It was held that those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they return and without resources, stand a significantly higher chance of failure.
6. Learned counsel next places reliance on the medical certificate of the mother of the petitioner to substantiate his case.
7. It is argued that in similar circumstances, other co-accused persons have been granted parole/bail.
8. Learned counsel also places reliance on an unreported order of the Supreme Court where the Supreme Court granted bail with regard to the main accused persons in respect of the same offence for which the present petitioner is behind the bars.
9. It is, thus, argued that the petitioner cannot be labelled as a hardened criminal and taking into consideration the factors enunciated by the Supreme Court in the reported judgment, the petitioner ought to be granted parole.

10. Learned counsel for the State files a statement of facts which indicates that the petitioner has been convicted in several cases.
11. Although in one of the cases he was discharged, the petitioner is suffering life conviction and conviction in respect of two other cases on several offences.
12. The report suggests that as per the report of the police authorities, the present petitioner has several family members (five brothers) to look after his ailing mother and that the police authorities of Nagina Police Station in Haryana, which is the native place of the petitioner, have raised objection against the petitioner's release on parole, citing chances of him being involved in illegal activities and escaping parole.
13. Learned counsel for the State also places reliance on other portions of the judgment cited by the petitioner where the Supreme Court held that the public purpose in granting parole or furlough is ingrained in the reformation theory of sentencing and 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.
14. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime after they are released on

parole or to become a threat to the law and order of the society should not be released on parole.

15. The Supreme Court further observed that hardened criminals, who are persons for whom it has become a habit or way of life and such a person would necessarily attempt to commit crimes again and again ought not to be released on furlough.
16. Upon careful consideration of the annexures to the writ petition, it transpires that in one of the cited judgments in the case of *Ashabuddin alias Soukat* the consideration before this court was that the petitioner therein had asked for a five-day parole on the occasion of his daughter's marriage, which had an immediacy about it.
17. The same cannot be equated with the present case for reasons to be discussed hereinafter.
18. Insofar as the grant of bail by the Supreme Court to the main accused person, the considerations for grant of bail, on conditions as stipulated therein, are different from parole.
19. In the present case, moreover, the petitioner has sought for parole not on general grounds of reconnecting with society or for any other emergent purpose or something as immediate and essential as giving his daughter in marriage, but on the specific ground that he has to look after his 73 year

old mother who according to the petitioner is suffering from various terminal medical illnesses.

20. Although the reliance of the State on Section 62 of the Correctional Services Act, which stipulates that parole can be granted only in emergent circumstances or where there is a serious illness, funeral in the family or like reasons cannot be taken to be the only premise of granting parole, taken in the present context, the petitioner's averment that his mother is 73 years old and suffering terminally cannot be accepted even on the basis of the medical certificate provided by the petitioner and annexed to the writ petition.
21. Even if we proceed on the basis of the said certificate, issued by a private doctor, we find that the 'illness' of the petitioner's mother is as mundane as fever, general weakness, headache etc.
22. Surprisingly, the medical practitioner who issued the certificate suggests the petitioner's mother to be admitted under ICU care, for such basic ailments such as headache, fever etc., which defies all logic and clearly indicates that the said certificate was tailor-made to suit the purpose of the present writ petition.
23. Even if we proceed on the premise that the petitioner's mother is 73 year old and suffers from fever, general weakness, headache, etc., the same

cannot afford sufficient opportunity to the petitioner to claim that the petitioner's mother is suffering from "terminal illness".

24. If such circumstances as above were to be taken to be terminal illnesses, there would not be any end to terminal illnesses, which would frustrate the very definition of "terminality" of the illness.
25. Hence, the ground on which the petitioner asked for 30 days' parole does not justify the petitioner being granted parole at all.
26. Although the report submitted by the State states that there are five brothers other than the petitioner to look after the ailing mother of the petitioner, the same may not be sufficient to preclude the petitioner to meet his mother in the event the petitioner's mother is actually suffering from terminal illness.
27. It is so because the petitioner's need to meet his ailing mother, if the illness is of such a serious nature that it cannot wait, cannot be equated with five other brothers taking care of the mother.
28. However, even if such ground is not a total bar to the petitioner meeting his mother, the frivolous ground which is taken in the present writ petition and the petitioner's application, that the petitioner's mother is merely 73 year old and suffers from fever, headache, general weakness, etc., do not afford

sufficient ground for parole being granted to the petitioner.

29. That apart, we cannot lose sight of the fact that the Nagina police station, which is in Haryana, has raised an objection on the apprehension that the petitioner may again engage in illegal activities and escape parole if so granted.
30. Such apprehension cannot be brushed aside, more so keeping in view of the fact that the petitioner is originally a resident of a different State than West Bengal, where he is incarcerated.
31. Thus, on the above aspects of the matter, although the petitioner at this stage cannot be labelled as a 'hardened criminal', the general yardsticks which have been stipulated by the Supreme Court in the reported judgment do not apply to the petitioner, since the petitioner has applied for parole on a specific ground which has been negated hereinabove on the grounds given in the present order.
32. Thus, WPA No. 28651 of 2023 is dismissed on contest without, however, any order as to costs.
33. Supplementary affidavit and written notes of arguments filed in court today be kept on record.
34. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)