



Judgment

wp167.24

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 167/2024.

Pralhad Feku Gupta,
Aged about 35 years,
resident of at Post Sinduriya
Bazar, District Maharajganj (UP)
(C-11286, Central Prison, Nagpur). ... **PETITIONER.**

VERSUS

1.Dy. Inspector of General of Prison,
Eastern Region, Nagpur.

2.The Superintendent,
Central Prison, Nagpur. ... **RESPONDENTS.**

Mr. S.D. Chande, Advocate for the Petitioner.
Ms N. Tripathi, A.P.P. for Respondents/State.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : FEBRUARY 21, 2024.

Rgd.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rule. Rule is made returnable forthwith and by consent of learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The petitioner has applied for special parole for the purpose of marriage of his sister. The Authority vide the impugned order passed in the month of January, 2024 has declined to grant special parole on account of adverse parole report, which is the subject matter of challenge in this petition.

3. The petitioner has questioned the legality of the said order on the ground that there is no convincing material to substantiate the adverse police report. It is submitted that merely because the petitioner is unmarried and is a resident of other State, the police are bent upon to express negative opinion. The petitioner has produced copy of marriage invitation card of his sister, which is scheduled on 26.02.2024. The petitioner would submit

Rgd.

that since last 5 years he is in jail and during the said period he has not been released either on parole or furlough, hence he urged for grant of special parole.

4. The respondent State resisted this petition primely canvassing that there is every likelihood of petitioner absconding after release. Our attention has been invited to the report of the concerned police authority of Maharajganj, State of Uttar Pradesh, stating that there exists every possibility that on release the petitioner may flee away to Nepal and therefore, it is not advisable to exercise the discretion.

5. The petitioner has been convicted by the Court of Sessions in Special Atrocities Case No.2/2019 for the offence punishable under Section 302 of the Indian Penal Code, and is sentenced to undergo life imprisonment till his natural death without remission, along with fine. It was a case of double murder about a lady and her grand daughter. The trial Court relying on the circumstantial evidence has returned a finding of guilt. The

Rgd.

petitioner is in jail from 24.10.2018. We have no doubt in our mind that as per Rules, there is no other impediment for release, however, unless we are satisfied about the petitioner's chances of return the discretion cannot be exercised. Admittedly the petitioner is a resident of Sinduriya, Taluq and District Maharajganj (Uttar Pradesh). The petitioner has not produced any document to show that he owns immovable property at either of the place. The concerned police have expressed possibility of petitioner's abscondence. Though the gravity of offence is not the criteria in stricter sense, however, while exercising the discretion we have to consider all attending circumstances. It is a case of double murder wherein two vulnerable lives have been taken away. The trial Court has imposed the punishment of harsh nature meaning thereby life imprisonment without remission. In the circumstances, we are not inclined to exercise our discretion to release the petitioner on special parole for the reasons stated. However, the petitioner's urge can be considered to the extent of permitting him to attend his sister's marriage under police escort, on payment of necessary charges.

6. In view of above, writ petition is partly allowed. The petitioner is permitted to attend marriage of his sister in police escort, subject to the petitioner paying necessary charges for the same. The permission is restricted to the extent of date of marriage only, excluding the period of travel.

7. Rule is made absolute in aforesaid terms.

JUDGE

JUDGE