



2024:DHC:1931



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

Date of Judgment: March 11, 2024

+ W.P.(CRL) 269/2024
HARISH YADAV

..... Petitioner

Through: Mr.Biswajit Kumar Patra (DHCLSC)
and Mr.Vaibhav Jain, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Sanjeev Bhandari, ASC with
Mr.Kunal Mittal and Mr.Arjit Sharma,
Advocates along with SI Hanspreet
Singh, ANTF/ Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Writ 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 preferred on behalf of the petitioner for quashing of rejection order dated 18.12.2023 passed by the respondent and for directing the respondent to release petitioner on parole for a period of three months.

2. In brief, as per the case of the petitioner, he has undergone imprisonment for almost 09 years 11 months till date, out of total imprisonment for a period of 10 years. Further, in default of payment of fine, petitioner is sentenced to simple imprisonment for 06 months.

3. An application filed by the petitioner for grant of parole for a period of three months, to re-establish social ties with his family members has been



rejected by the Competent Authority vide impugned order dated 18.12.2023 *inter alia* on following grounds:

*".... In this regard, I am to inform you that the request in respect of the above said convict for grant of parole has been considered and **rejected** by the Hon'ble Lt. Governor of Delhi in view of the following:*

1. As per Rule 1211 of Delhi Prison Rule-2018, which provide that:- "In the following cases, parole shall not be granted, except if in the discretion of the competent authority special circumstances exist for grant of parole;

*i. **Prisoners convicted under sedition, terrorist activities and NDPS Act.** In this case, as per crime details of convict, he is convicted for the offence punishable under NDPS Act*

2. As per recommendations received from the office of the DO (Prisons), it is recommended that the request for grant of parole on the ground of social ties being generic, does not attract exceptional conditions to qualify relief under rule 1211 of Delhi Prison Rules-2018."

4. Learned counsel for the petitioner submits that since the jail conduct of the petitioner has been satisfactory, parole should not have been rejected merely because the petitioner is convicted under NDPS Act. It is further submitted that petitioner sought parole to re-establish social ties with the family members, as well as to explore the possibility of making arrangement of payment of fine, since petitioner is required to undergo imprisonment, in default for a period of six months (SI) in the event fine is not deposited. It is also pointed out that petitioner did not misuse the liberty of release on emergency parole on an earlier occasion and has undergone almost substantive part of the sentence.

5. Learned ASC for the State supports the impugned order of rejection of parole, passed by the Competent Authority. He submits that the same is in accordance with Delhi Prison Rules, 2018 and petitioner cannot be granted



privilege of parole since he stands convicted under the provisions of NDPS Act.

6. As per Nominal Roll of the petitioner, he has undergone imprisonment for a period of 09 years 05 months and 18 days as on 20.09.2023 and unexpired portion of sentence as on said date is 06 months and 12 days. Petitioner has thereafter been in custody for a further period of time and has almost completed his substantive sentence. As per the case of the petitioner, he is required to deposit the fine amount in terms of order on sentence, failing which, to undergo SI for six months. He prays for parole for making arrangement of fine apart from maintaining social ties with family. The jail conduct of the petitioner as per Nominal Roll is satisfactory and emergency parole availed by the petitioner during 2021 has not been misused.

7. Rule 1211 of the Delhi Prison Rules, 2018 does not allow parole *inter alia* to prisoners convicted under NDPS Act, except if in the discretion of the Competent Authority special circumstances exist for grant of parole. It may also be noticed that Rule 1211 does not create an absolute bar for grant of parole to the prisoners convicted for offences referred to therein, but discretion is vested with the competent authority, if special circumstances exist for grant of parole.

Admittedly, petitioner has undergone almost substantive portion of sentence and apart from re-establishing social ties, parole has been sought to explore the possibility of making arrangements for payment of fine in terms of order on sentence, failing which he is required to undergo, SI for six months.



8. It has been observed by this Court in ***Rakesh Kumar v. State Govt. of Delhi and Anr., W.P.(CRL)60/2024*** decided on 13.02.2024 that the bar of judicial intervention to direct temporary release of a detenu would not affect the jurisdiction of the High Courts under Article 226 of the Constitution of India or the Hon'ble Apex Court under Article 32, 136 or 142 of the Constitution of India, to direct the temporary release of detenu, where request of detenu to be released on parole for a specified reason and/or for a specified period has been, in the opinion of the Court unjustifiably refused or where, in the interest of justice such an order of temporary release is required to be made.

Reference may also be made to order dated 14.10.2020 passed in ***Sukhvinder Kaur v. State (Govt. of NCT of Delhi) & Ors., W.P.(CRL)1070/2020*** passed by co-ordinate Bench of this Court wherein parole was granted for a period of eight weeks despite the fact that petitioner stood convicted under Section 24 (A,B,C) of the Poisons, Opium and Dangerous Drugs Act and sentenced to two life imprisonments.

9. This Court is of the considered opinion that since the parole apart from re-establishing social ties, is sought on the ground of arranging funds for payment of fine, there appear to be sufficient reasons for releasing the petitioner on parole.

Considering the facts and circumstances, petitioner is directed to be released on parole for a period of three weeks from the date of his release subject to furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the satisfaction of Jail Superintendent (concerned). Petitioner shall surrender immediately after expiry of parole period before the Jail Superintendent.



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Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to Jail Superintendent for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MARCH 11, 2024/v/sd