



2024:DHC:1017



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

Judgment delivered on: 13.02.2024

+ **W.P.(CRL) 422/2024**

HANSRAJ SURANA

..... Petitioner

Through: **Dr. J. B. Choudhary, Advocate.**

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Mr. Anand V. Khatri, ASC.**

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been preferred on behalf of the petitioner for grant of parole for a period of 30 days in Case Nos. 684/2021 and 668/2021.
2. In brief, as per the case of the petitioner, he was convicted and sentenced vide order dated 19.10.2023 in CC No.684/2021 in proceedings under Section 138 of NI Act, wherein he was sentenced to pay Rs. 32 lacs as compensation under Section 357(3) Cr.P.C. and in case of default in payment of fine, to undergo simple imprisonment of 03 months. Further, in CC No.668/2021, he was directed to pay Rs.8 lacs as compensation under Section 357(3) Cr.P.C. within 30 days and in default to undergo simple imprisonment for 03 months. No appeal is stated to have been preferred against conviction and order on sentence passed by learned Trial Court.



3. It is further the case of the petitioner that he moved an application for releasing him on parole for a period of 30 days for attending the funeral ceremony of his mother on 25.01.2024 before the Court of learned MM, NI Act, Digital Court, East, Karkardooma Court, Delhi, but the same was not taken on record, compelling him to file the present writ petition. Counsel for the petitioner is also stated to have preferred an application for parole before D.I.G./D.G. Prisons, Tihar Jail, Delhi as well as Divisional Commissioner (East District), but no response has been received.

4. Learned counsel for the petitioner submits that petitioner has undergone about 2.5 months out of 3 months of sentence and may be released on parole for attending the customary ceremonies on account of death of his mother.

5. On the other hand, learned ASC for the State submits that as per status report received by him, petitioner was sentenced in CC No. 684/2021 under Section 138 NI Act, PS: Gandhi Nagar and has undergone 2 months and 19 days of sentence in jail as on 08.02.2024 and conduct of the convict is satisfactory. However, no information has been received regarding filing or pendency of any application preferred by the petitioner before the Competent Authority. It is further submitted that application, if any filed, can be considered in accordance with law.

6. It has been observed in *Sunil Fulchand Shah vs. Union of India and Ors.*, 2000 (1) SCR 945 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 to direct the temporary release of the detenu, where request of the 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. However, the said jurisdiction is to be exercised sparingly by the Court, wherein the facts and circumstances so deserve for passing of directions despite the specific provisions in the relevant Prison Rules.

7. In **Kiran vs. State, 2019 SCC OnLine Del 6578**, the application for grant of parole was rejected by the competent authority on account of a major punishment afflicted to the petitioner. The prayer for grant of parole was allowed by this Court holding that powers of the High Court under Article 226 of the Constitution of India cannot be curtailed, which is required to be exercised to meet the ends of justice and in case, the release of prisoner on parole is warranted in the exigencies. The observations in paragraphs 11 and 12 therein may be beneficially referred:

*“11. As noted above, Rule 1210 (II) provides that the conduct of the prisoner who has been awarded major punishment for any prison offence should have been uniformly good for the last two years from the date of application and the conduct of the prisoner who has been awarded minor punishment or no punishment for any prison offence should have been uniformly good for the last one year from the date of application. It shows that once a major punishment is provided it has the effect for non-grant of parole for a period of two years. This would be applicable when the prisoner seeks parole in order to maintain social ties or for general circumstances and not special circumstances. **Further the power of the High Court under Article 226 of the Constitution of India cannot be curtailed which is required to be exercised to meet the ends of justice and in case the release of the prisoner on parole is warranted in the exigencies, the Court is duty bound to exercise the jurisdiction.***



12. In the decision reported as 2000 (8) SCC 437 Dadu @ Tulsidas Vs. State of Maharashtra the Supreme Court dealing with the constitutional validity of Section 32(A) of the NDPS Act held:-

29. Under the circumstances the writ petitions are disposed of by holding that:

(1) Section 32-A does not in any way affect the powers of the authorities to grant parole.

(2) It is unconstitutional to the extent it takes away the right of the Court to suspend the sentence of a convict under the Act.

(3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment.”

8. This Court is of the opinion that directions for consideration of application filed before the Competent Authority for grant of parole is likely to take considerable period of time and frustrate the very purpose of performance of some rituals on account of death of mother of the petitioner. The period of release on parole admittedly is not counted towards the sentence undergone and petitioner has already undergone about 02 months and 19 days out of 03 months of imprisonment awarded by learned Trial Court as on 08.02.2023.

In the facts and circumstances of the present case, petitioner is admitted to parole for a period of one week, w.e.f. the date of his release on furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount to the satisfaction of Superintendent Jail and subject to following conditions :

- i. Petitioner shall provide his mobile number to the Superintendent Jail at the time of release; and



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- ii. Petitioner shall surrender before the Superintendent Jail on the expiry of the period of parole.

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

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

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 13, 2024/R