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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1147/2024**
ISHWAR LAL Petitioner

Through: Mr. Shannu Baghel and Mr. Sudhir Kumar, Advs.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Yasir Rauf, ASC (Crl.) for State with Mr. Alok Sharma, Mr. Vasu Agarwal, Mr. Sanjeev Kumar and Mr. Manish Suri, Advs.
SI Sudhir Kumar, ANTF/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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10.04.2024

CRL.M.A. 11074/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P.(CRL) 1147/2024

1. 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 with the following prayer:

“a) Issue a writ in the nature of 'Mandamus and any other appropriate writ, directing the respondent to release on the petitioner after modification of default sentence of one year.’”

2. Issue notice. Learned ASC for the State appears on advance notice and accepts notice.



3. Learned counsel for the petitioner submits that the petitioner was convicted under Section 21(c) of NDPS Act vide judgment dated 17.09.2016 and sentenced vide order dated 19.09.2016 to undergo RI for a period of 10 years alongwith fine of Rs. 1,00,000/- (in default of payment of fine to undergo RI for one year). The aforesaid judgment and order on sentence was upheld in CRL.A. 59/2017 vide judgment dated 04.11.2020 and petitioner is stated to be undergoing sentence in default of payment of fine, after completion of his substantive sentence for a period of 10 years.

4. Learned counsel for the petitioner contends that owing to poor background, petitioner is unable to pay the fine amount and as such prays that petitioner may be released on imprisonment undergone, after modification of orders on sentence upheld in appeal.

5. Learned ASC for the State submits that by way of present writ petition, petitioner seeks review of judgment dated 04.11.2020 passed in appeal and the same is not permissible in law. It is further urged that the only remedy available to the petitioner is to challenge the judgment dated 04.11.2020 passed in appeal, in case he is aggrieved by sentence.

6. It is well settled that inherent powers under Section 482 Cr.P.C. are intended to prevent the abuse of the process of Court or secure the ends of justice. The powers under Article 226 of the Constitution of India & Section 482 Cr.P.C. cannot be used for the purpose of modification / review of sentence passed in Appeal by this Court in view of express bar under Section 362 Cr.P.C. 1973. As such, the contentions raised on behalf of the respondent opposing the maintainability of the present petition, is of considerable merit.

7. At this stage, learned counsel for the petitioner seeks to withdraw the petition with liberty to pursue appropriate remedy in accordance with law.



8. Taking the statement of learned counsel for the petitioner on record, petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J.

APRIL 10, 2024/akc