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

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Reserved on:21.05.2024
Pronounced on:30.05.2024

+ **W.P.(CRL) 1736/2023**

BHARAT BHARDWAJ @ NIKKU Petitioner

Through: Mr. Biswajit Kumar Patra,
Advocate.

versus

STATE

..... Respondent

Through: Mr. Amol Sinha, ASC for the
State with Mr. Kshitiz Garg,
Mr. Ashvini Kumar, Ms.
Chavi Lazarus, Mr. Arjun
Singh Kadian, Advocates and
SI Shajid Hussain, P.S.
Malviya Nagar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. ') has been filed by the petitioner seeking grant of parole for a period of eight (08) weeks for filing the special leave to appeal before the Hon'ble Supreme Court of India.

2. The petitioner is presently lodged in Central Jail No. 02, Tihar, New Delhi. By way of judgment dated 13.02.2019 passed by the



learned Additional Sessions Judge, Saket Courts, New Delhi, the petitioner herein was convicted in case arising out of FIR bearing No. 323/2009 registered at Police Station Malviya Nagar, Delhi for offences punishable under Sections 302/326/147/148/149/452 of the Indian Penal Code, 1860 ('IPC') and had been sentenced to undergo rigorous imprisonment for life. Thereafter, the petitioner had challenged the said judgment before this court by filing an appeal i.e., CRL. A. 514/2019 and this Court *vide* judgment dated 27.03.2023 had dismissed the said appeal. The petitioner herein is seeking parole to file an SLP before the Hon'ble Supreme Court against the judgment of this Court.

3. Learned Counsel appearing on behalf of the petitioner submits that the petitioner had filed an application seeking parole before the competent authority for filing of SLP. However, the competent authority *vide* order dated 04.07.2023 has rejected the application for grant of parole to the petitioner. It is further submitted that the order rejecting grant of parole to the petitioner has been passed without application of mind as Rule 1210 (II) is in favor of the petitioner since he has a good conduct in the last two years since he has not been awarded with any major punishment after 07.01.2022. Thus, the same is arbitrary and unfair. Therefore, the petitioner be granted parole in order for him to file an SLP before the Hon'ble Supreme Court and also to establish social ties with his families as he has undergone almost 10 years of sentence, with remission of 01 year 02 months and 06 days. Therefore, considering the above contentions the petitioner herein be granted parole.



4. *Per Contra*, Learned ASC appearing on behalf of the State argues to the contrary.
5. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.
6. This Court has also gone through the order dated 04.07.2023 passed by the competent authority whereby the parole sought by the petitioner herein has been rejected. The same is reproduced as under:

“Sir,

This is with reference to your file CD No.003734720, whereby proposal regarding grant of parole to the above said convict was sent to this office for consideration. 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 followings: -

1. The convict is not entitled for parole in view of Rule 1210 sub rule (II) of Delhi Prison Rules' 2018, which states that: -Rule 1210 sub rule (II): - "The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application". In this case, punishment dated 07.01.2022 awarded to the above said convict is a major punishment as per Rule 1271 of Delhi Prison Rules, 2018.
2. 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;
(VIII). 'If a prisoner is convicted for multiple murders whether in single case or several cases, in this case, as per crime detail, the above said convict held guilty for committing multiple murder.
3. The Prison Department has recommended that filing of SLP in Supreme Court by a private senior counsel is always a costly affair for which the convict, probably, cannot meet due to the weak financial condition of his family (As per report of probation officer, his family belongs to lower middle class). Instead, he can avail legal aid facility from the Jail where he



can get his SLP drafted by legal aid advocate and file it in the Supreme Court. Therefore, the convict can be advised to consult visiting legal aid advocate for drafting his SLP. Further, the request for grant of parole on the grounds to social ties and filing of SLP in Supreme Court, being generic, does not attract exceptional condition to qualify relief under Rule 1211 of Delhi Prison Rules, 2018.

4. The above said convict has also last availed interim bail of 02 weeks w.e.f. 20.04.2021 to 09.05.2021 granted by the Hon'ble High Court of Delhi which was extended time to time due to Covid-19, but he surrendered himself on 22.11.2022.
5. Further, as per nominal roll, overall jail conduct of said convict is reported to be unsatisfactory. The Superintendent, Central Jail No. 02, Tihar has also not recommended grant of parole to said convict in view of unsatisfactory jail conduct..”

7. This Court has perused the nominal roll placed on record and the nominal roll reveals that the conduct of the present petitioner has been satisfactory in the last one year. Though, he had been awarded punishment in the year 2022, however, no punishment has been awarded to him after 2022. Thus, the present petitioner fulfills the criteria prescribed under Rule 1210 of the Delhi Prison Rules, 2018 which reads as under:

Rule 1210 sub rule (II): - The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application.

8. This Court notes that Rule 1208 of the Delhi Prison Rules, 2018 provides filing of SLP before the Hon'ble Apex Court as one of the grounds for seeking grant of parole. The same is reproduced as under:



“1208. Subject to fulfillment of conditions stipulated in Rule 1210 below, it would be open to the Competent authority to consider applications for parole on the grounds such as :-

- i. Serious illness of a family member.
- ii. Critical conditions in the family on account of accident or death of a family member.
- iii. Marriage of any member of the family of the convict;
- iv. Delivery of a child by the legally wedded wife of the convict.
- v. Serious damage to life or property of the family of the convict including damage caused by natural calamities.
- vi. Sowing and harvesting of crops.
- vii. To maintain family and social ties.
- viii. To pursue the filing of a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.”**

9. Further, this Court is of the opinion that Rule 1211 of the Delhi Prison Rules, 2018 provides that parole shall not be granted in cases of sedition, terrorist activities, NDPS Act, prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or if there exists any other reasonable ground such as a pending investigation in a case involving serious crime, prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or



who have been found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report, convicted foreigners subject to prior approval of Ministry of Home Affairs & Ministry of External Affairs and having valid permission to stay in India, prisoners suffering from mental illness, if not certified by the medical officer to have recovered, if the prisoner is convicted of murder after rape, if the prisoner is convicted under POCSO, if prisoner is convicted for multiple murders whether in single case or several cases, if prisoner is convicted for dacoity with murder, if prisoner is convicted for murder after kidnapping for ransom, if the prisoner is convicted under Prevention of Corruption Act and if the case is investigated by the Central Bureau of Investigation or Central Agency except, if in the discretion of the competent authority special circumstances exist for grant of parole. The same reads as under:

“1211. 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.

II. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime.

III. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be



instigating serious violation of prison discipline as per the reports in his/ her annual good conduct report.

IV. Convicted foreigners subject to prior approval of Ministry of Home Affairs & Ministry of External Affairs and having valid permission to stay in India.

V. Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered,

VI. If the prisoner is convicted of murder after rape;

VII. If the prisoner is convicted under POCSO;

VIII. If prisoner is convicted for multiple murders whether in single case or several cases.

IX. If prisoner is convicted for Dacoity with murder.

X. If prisoner is convicted for Murder after kidnapping for ransom.

XI. If the prisoner is convicted under Prevention of Corruption Act.

XII. If the case is investigated by the Central Bureau of Investigation or Central Agency...”

10. Rule 1211 of the Delhi Prison Rules, 2018 when applied to the facts of the present case would reflect that the case of petitioner herein falls within the parameters of the said rule as he has been convicted of committing murders of two persons.

11. This Court notes that the Courts have consistently emphasized that the right of a convict to file a Special Leave Petition challenging the dismissal of their criminal appeal by a High Court is crucial right. This right cannot be denied based on the availability of free legal aid in jail and the possibility of filing the SLP from the jail premises. Given that the petitioner’s sole recourse for assailing his conviction now rests with the Hon’ble Apex Court, it is important to afford him the opportunity to pursue his legal remedy by filing the SLP through his chosen counsel. This Court also takes note of the fact that the accused after commission of the offence has remained in judicial



custody for about 11 years with remission and for last two years, his conduct has been satisfactory.

12. Considering the aforesaid facts and circumstances, this Court is inclined to grant parole to the petitioner for a period 04 weeks from **the date of his release**, on the following conditions: -

- i. The petitioner shall furnish a personal bond in the sum of Rs.15,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
- ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.
- iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
- iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
- v. The petitioner shall furnish a copy of the SLP filed before the Hon'ble Supreme Court to the Jail Superintendent at the time of surrendering. A copy of the SLP shall also be placed on record before this Court.
- vi. The period of parole shall be counted from the day when the petitioner is released from jail.



13. In above terms, the present petition stands disposed of.
14. A copy of this order be sent by the Registry to the Jail Superintendent concerned for compliance.
15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 30, 2024/at