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

% **Date of Decision: 06.02.2024**

+ **W.P.(CRL)1902/2023**

DESH RAJ @ DESU

.....Petitioner

Through: Mr. Shiv Chopra with Ms.
AADHYAA Khanna & Mr.
Siddharth Arora, Advocate.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Nandita Rao, ASC for
State with Insp. Daleep
Kumar, AEKC Crime Branch.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant 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 filed on behalf of petitioner seeking setting aside of impugned order dated 31.05.2023 bearing No. F/18/16/2023/HG/1525 passed by the respondent; and for issuance of writ in the nature of mandamus seeking release of petitioner on parole for a period of two months.

2. The petitioner is presently confined in Mandoli Jail No. 11, Delhi. By virtue of judgment dated 22.09.2022, the petitioner was



convicted under Section 302/120B/34 of Indian Penal Code, 1860('IPC') in case arising out of FIR bearing no. 356/2007, registered at Police Station, Hauz Qazi, Delhi and was sentenced to undergo rigorous imprisonment for life by the learned Additional Sessions Judge, Tiz Hazari Courts, Delhi. His appeal against conviction i.e., CRL.A. 489/2020 was dismissed by this Court *vide* judgment dated 03.03.2023.

3. Learned ASC for the State opposes the present writ petition and submits that the order of rejection dated 31.05.2023 was passed by the concerned authorities keeping in mind the past conduct of the petitioner and that there are six other cases pending against him and the petitioner can jump parole if released as he is a habitual offender. In these circumstances, the present writ petition for grant of parole be dismissed.

4. On the other hand, Learned Counsel appearing on behalf of petitioner submits that the petitioner is seeking grant of parole for a period of two months for filing SLP before the Hon'ble Supreme Court of India against the judgment passed by this Hon'ble Court dismissing petitioners Criminal Appeal *vide* order dated 03.03.2022. It is further submitted that the application of grant of parole to the petitioner was rejected by the respondents *vide* order date 31.05.2023 on the ground that there are six other cases pending against him and the petitioner can jump parole if released. However, in this regard it is submitted that the petitioner has never been released on parole before and that this Court had earlier granted interim bail to the petitioner and that he had surrendered on time and



had not misused the liberty granted to him. It is further contended that the said order of rejection is contrary to the fundamental principles of law and is liable to be set aside. Therefore, the petitioner be granted parole for a period of two months as prayed for.

5. This Court has heard arguments on behalf of both the parties and has gone through the material placed on record.

6. This Court has perused rejection order dated 31.05.2023 passed by the respondents and the same is reproduced as under:

“With reference to your office letter F.11/SCJ-11/AS(CT)/2023/864 dated 10.04.2023, on the subject cited above, 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 As per nominal roll, 06 other cases are pending against the above said convict.

2 Further, as per police verification report received from the office of SHO, PS- Hauz Qazi, it is stated that he is a habitual offender. There is possibility of jumping parole and committing similar offence by the said convict or by engaging in gang activity with robbers, dacoits, kidnappers and extortionists.

The convict may be informed accordingly”.

7. Thus, the application for grant of parole filed by the petitioner has been rejected on the ground that he has six other cases pending against him and that as per the police verification report he is a habitual offender and therefore, there is a possibility of jumping parole and committing a similar offence.



8. This Court has also gone through the Delhi Prison Rules, 2018. Rule 1197 and 1200 provide insight as to what objects are achieved by releasing a convict on parole. The said rules read as under:

“1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison.

1200. The objectives of releasing a prisoner on parole and furlough are:

- i.) To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self-confidence,
- iii. To enable him to develop constructive hope and active interest in life,
- iv. To help him remain in touch with the developments in the outside world,
- v. To help him remain physiologically and psychologically healthy,
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and vii. To motivate him to maintain good conduct and discipline in the prison...”

9. This Court notes that Rule 1208 of the Delhi Prison Rules, 2018, provides the following grounds on which an application filed by the prisoner can be considered by the competent authority:

“**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..."**

10. Thus, Rule 1208 provides filing of SLP before the Hon'ble Apex Court as one of the grounds for seeking grant of parole. Rule 1210 prescribes criteria to be eligible for release on parole and as revealed from records, the present petitioner fulfills the said criteria. Thereafter, Rule 1211 also provides that in certain cases as mentioned in the said rule, the competent authority will grant parole only in cases of special circumstances, and perusal of the same reveals that the case of petitioner herein also does not fall within the parameters of said rule.

11. The Courts have time and again held that the right of a convict to file SLP before the Hon'ble Apex Court, challenging his conviction and incarceration, is a valuable right which should not be denied. This Bench in *Neeraj Bhatt v. State (NCT of Delhi)* 2023 SCC OnLine Del 32 had observed as under:

"9. ...It is the right of a citizen to effectively pursue his legal remedy in the last court of justice in the county by filing SLP through a counsel of his own choice which is a valuable right. This cannot be



withheld merely on the basis of his past conduct or on the ground that free legal aid is available and that SLP can be filed from the jail itself. Needless to say, availing his legal remedy in the Apex Court of the country is the right of the petitioner and this Court is not inclined to withdraw the same.”

12. Similarly, it was observed by this Bench in **Ved Yadav v. State (NCT of Delhi) 2023 SCC OnLine Del 1261** that:

“9. It has been time and again held by Courts that right of a convict to file an SLP against dismissal of his criminal appeal by a High Court is an essential one, and the same cannot be denied on the ground that free legal aid is available in the jail and SLP can be filed from the jail itself.

13. While considering the present writ petition for grant of parole, the Court also has to remain conscious of the fact that the petitioner has been awarded rigorous imprisonment for life and that as per the Nominal Roll, he has already remained in incarceration for almost 14 years 05 month excluding remission of about 09 months and 29 days. This Court also notes that the petitioner is already on bail in other cases as per the nominal roll however, as per the counsel for the petitioner the petitioner has already undergone sentence in the said cases and the fact that the petitioner has never been released on parole.

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



- i. The petitioner shall furnish a personal bond in the sum of Rs.10,000/- 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.
 - 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 period of parole shall be counted from the day when the petitioner is released from jail.
15. With the above terms, the present writ petition stands disposed of.
16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBURARY 06, 2024/hs