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

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Reserved on: 22.03.2024
Pronounced on: 02.05.2024

+ **W.P.(CRL) 1943/2023**

LAL BAHADUR

..... Petitioner

Through: Mr. Vishesh Wadhwa and Mr.
Arjun Gupta, Advocates.

versus

STATE (GNCT OF DELHI)

..... Respondents

Through: Mr. Sanjeev Bhandari, ASC
(Crl.) with Kunal Mittal, Mr.
Arjit Sharma and Ms. Rishika,
Advocates along with SI
Deepak Tanwar, P.S. Delhi
Cantt. for State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks appropriate writ/order/direction in the nature of Certiorari for quashing of order no. F.18/12/2010/PART-I/HG/1109-1110 dated 21.04.2023, and in the nature of mandamus for directing the respondent to release the petitioner on parole for a period of three months.



2. The petitioner who is confined in Central Jail No. 3, Tihar, Delhi, was acquitted in case FIR No. 421/1984 by the learned Trial Court. However, in the appeal, this Court had set aside the order of acquittal and had convicted the petitioner under Sections 302/396/449/436/395/147/149 of Indian Penal Code, 1860 ('IPC') and had sentenced him to undergo rigorous imprisonment for life. The SLP filed against the order of this Court was dismissed by the Hon'ble Supreme Court of India in the year 2013.

3. The petitioner had filed an application, seeking parole, with the respondent which was rejected *vide* order dated 21.04.2023.

4. Learned counsel appearing on behalf of the petitioner states that the petitioner is a senior citizen, aged about 77 years who is suffering from various old aged ailments. It is argued that the application seeking parole filed by the petitioner has been arbitrary rejected by the respondent without appreciating the fact that the jail conduct of the petitioner has always been satisfactory. It is further stated that the petitioner had been released on parole and furlough on eight occasions in the past, and he had always surrendered on time except for the last occasion when he was released on furlough in the year 2016. However, it is stated that during the said period, the petitioner had met with an unfortunate incident in which lenter/shuttering material had fallen on him due to which he had received serious injuries and he could not surrender on time and was thereafter re-arrested. It is further argued that the petitioner has remained in judicial custody for more than nine years, and his wife is also aged about 73 years and her medical condition is not good and she also



requires the company of the petitioner. Therefore, it is prayed that the present petition be allowed.

5. On the other hand, learned ASC appearing on behalf of the State argues that the application filed by the petitioner seeking parole was rightly rejected by the competent authority since he had violated the terms and conditions of the furlough which had been granted to him in the year 2016 and had jumped the same and absconded, and he could get re-arrested only in the year 2022. It is further submitted that the petitioner has been convicted for dacoity with murder and, thus, his case is also hit by Rule 1211 of the Delhi Prison Rules, 2018. It is, therefore, prayed that the present petition be rejected.

6. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned ASC for the State and has gone through the material placed on record.

7. In the present case, the petitioner's application by virtue of which he had sought parole from the respondent was dismissed *vide* following order:

"With reference to your office letter F.No.(003727458)/CJ/Legal/2023/1970-71 dated 17.03.2023, 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. The convict is not entitled for parole in view of Rule 1210 sub rule (IV) and 1212 Note (2) of Delhi Prison Rules-2018 which states that:-

1210 sub rule (IV):- "The convict should not have violated any terms and conditions of the



parole or furlough granted previously". In this case, the above said convict was released on 02 weeks furlough w.e.f. 05.02.2016 to 20.02.2016 granted by the DG (Prisons) but he did not surrender on due date and thus absconding/jumped further, he has been re-arrested on 18.07.22.

Rule 1212 Note (2):-"Simultaneous parole to co-accused is ordinarily not permissible however, in exceptional circumstances competent authority may consider for reasons writing for granting parole to co-accused who are family members". In this case, as nominal roll point no. 21, his two co-accused are on emergency parole.

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; "

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.

IX. If prisoner is convicted for Dacoity with murder- In this case, as per crime detail, the above said convict is convicted for the offence murder with dacoity.

3. As per medical report forwarded by the Superintendent, Central Jail No. 3, Tihar, it is stated that at present, the vitals and general condition of the inmate patient is stable. He is being provided all prescribed treatment from jail dispensary.

4. Further, as per report received from the office of the DG (Prisons), it is stated that in



view of the overall facts, furlough jump and re-arrested, large period of unexpired sentence, non recommendation of police, Probation Officer and Superintendent Jail, the parole application of the convict may not be recommended at this stage. The Superintendent, CJ-3 has also not recommended grant of parole to the above said convict due to absconded/jumped from furlough.”

8. Having gone through the contents of the Nominal Roll, this Court notes that the present FIR relates to the year 1984 and the petitioner herein was initially acquitted by the learned Trial Court and was never arrested either during the course of investigation or during the course of trial. It was only after his conviction by this Court that the petitioner was sent to custody in September, 2008.

9. Nominal Roll also reveals that the petitioner had been granted parole on three occasions and furlough on five occasions between the period 2011 to 2016 and he had not misused the liberty granted him, and had always surrendered on time, except on the last occasion when he was granted furlough for two weeks in February, 2016. However, it is the case of petitioner that he had met with an accident during the said period and had suffered injuries due to which he could not surrender on time and was arrested in the year 2022.

10. Having taken a note of the same, this Court is also conscious of the fact that the conduct of the petitioner inside the jail has been satisfactory throughout his period of custody and he has not been awarded any punishment. Even after his re-arrest in July 2022, no adverse report has come on record against the petitioner and his



conduct has been satisfactory. Moreover, the petitioner is aged about 78 years and has remained in custody for about nine years and two months.

11. The Delhi Prison Rules, 2018 itself provide the importance of granting parole to a convict, which *inter alia*, mentions about the negative impact on physical and mental health of prisoners due to incarceration and the significance of allowing a convict to maintain social relations with his family and community, thereby providing him a hope for life.

12. Therefore, considering the advanced age of the petitioner, his satisfactory conduct inside the jail and the fact that he had earlier been released on parole and furlough on several occasions when he had not misused the liberty, this Court is inclined to grant parole to the petitioner for a period of four weeks, subject to following terms and 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.

13. Accordingly, the present writ petition is disposed of in above terms.

14. Copy of this order be forwarded to the concerned Jail Superintendent for necessary information.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 02, 2024/at