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

+ **W.P.(CRL) 2117/2023**

MD. NAZIR KHAN

.....Petitioner

Through: Mr. Faraz Maqbool, Mr. Chandan Kumar, Mr. Vismita Diwan and Mr. Ishaan Dhukan, Advocates

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amol Sinha, ASC for the State with Insp. Sanjeev Kumar SPL Cell

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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08.08.2024

CRL.M.A. 23528/2024(for early hearing)

1. The present Application has been filed under Section 482 of the Code of Criminal Procedure on behalf of the petitioner for early hearing of the Writ Petition.

Learned ASC appearing on behalf of the State has no objection if the Application is allowed.

2. The Application is allowed and with the consent of both the parties the matter is taken up today.

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3. The present Petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. to allow the custody parole of the petitioner to visit the Pakistan Embassy for arranging funds from family for effective representation and payment of fine and to seek



some documents from the High Commissioner of Pakistan. The second prayer is that he may be allowed to make a phone call to his family members once a month.

4. In so far as the Custody Parole to Pakistan Embassy, is concerned it is stated that the same is required to enable him to file an SLP against the Order of the Sentence Review Board, rejecting his case for remission.

5. It is further submitted that for the purpose of filing the SLP, certain documents are required which is a Police Report from the Pakistan Police, citizenship documents to start his Visa renewal process, other misc. Travel related documents to justify his temporary stay in India and to arrange the funds in the sum of Rs. 1,80,000/- to pay the fine.

6. After some arguments, learned counsel for the petitioner states that these documents sought by the petitioner were in anticipation of his release so that he could travel back to his country. It is considered that the petitioner is insisting on Custody Parole at this stage for the documents to be forwarded to the Pakistan Embassy for processing.

7. It is hereby directed that the Letter seeking the aforesaid documents as stated in the Application, may be forwarded by the Jail Superintendent in accordance with the Rules to Pakistan Embassy.

8. The second prayer which has been sought is that earlier he had been permitted to make a call every month to his family members, but the same is not being now permitted to the petitioner. He has made four Applications but no effective steps have been taken.

9. Learned ASC for the State has pointed out that though earlier he had been provided this facility, but since there has been a change in Delhi Prison Rules, it is no more possible. A reference has been made to Rule 631 of



DPR-2018 which provided that the petitioner involved in offences against the State under TADA or in heinous offences such as robbery, dacoity, murder, kidnapping for ransom etc., habitual jail rules offenders, frequently involved in assaulting co-inmates in the prison, shall not be eligible for this facility in the interest of Public Safety and Order. However, the Superintendent Jail is empowered to take appropriate decision in individual case to case basis with the prior approval of Deputy Inspector General.

10. The Letter to allow the petitioner to make a call(ISC) to his family members in Pakistan once a month has already been forwarded to the Competent Authority vide Letter dated 22.07.2023.

11. It is further submitted that the petitioner is convicted under TADA and various sections of the IPC. He is a Pakistani national and therefore, in view of safety and security, his call is to be allowed only in extreme exigencies. However, the phone call facility has been availed by the petitioner to make calls to his legal Aid counsel two to three times.

12. Learned counsel for the petitioner however, submits that his Applications are being made for making calls to his family members, but are not being considered by the Competent Authority.

13. It is pertinent to refer to Order dated 25.05.2009 in CRL.M.C. 1565/2009 wherein the petitioner was permitted to call his mother who was stated to be seriously ill having suffered a heart attack subject to the condition that the Jail Superintendent shall record the phone number, the name of the relative to answer the phone at the time of the in the concerned Register.

14. The abovementioned Order is of 2009 wherein the serious illness of the mother was the reason to allow the calls. However, when asked about the



health of the mother, the counsel for the petitioner submitted that he is not aware of the medical condition of the mother as he has not talked to her since last year and at that time she had recovered and was not ill.

15. Considering the totality of the circumstances, it is hereby directed that the petitioner shall make an Application every time he is inclined to talk to his family members, which shall be decided by the Competent Authority within one week of it being made.

16. The Petition is accordingly disposed of.

17. The date already fixed stands cancelled.

NEENA BANSAL KRISHNA, J

AUGUST 8, 2024/PT