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

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*Reserved on: 18.07.2024**Pronounced on: 26.07.2024*+ **W.P.(CRL) 2455/2023****JAHANGIR@ EKKA@ IBRAHIM**

.....Petitioner

Through: Mr. Faraz Maqbool
(DHCLSC), Ms. Sana Juneja
and Ms. Vismita Diwan,
Advocates

versus

THE STATE (GOVT OF NCT, DELHI)

.....Respondent

Through: Mr. Yasir Rauf Ansari, ASC
(Criminal) for the State with
Mr. Alok Sharma, Mr. Vasu
Agarwal, Advocates and SI
Vishal, P.S. Ashok Vihar,
Delhi

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant 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 the petitioner seeking issuance of writ in the nature of Certiorari or any other appropriate writ, order or directions seeking quashing of order No.F.18/7/2017 /HG/1943-1944, dated 16.06.2023, passed by the respondent/



competent authority of GNCT of Delhi, rejecting the application of the petitioner seeking parole, and seeking issuance of writ of Mandamus to release the petitioner on parole for a period of 12 weeks, in FIR No. 254/2003, registered at Police Station Seemapuri, Delhi and FIR No. 41/2011, registered at Police Station Ashok Vihar, Delhi.

2. The petitioner is presently confined in Central Jail No. 08/09, Tihar, New Delhi. By virtue of judgment dated 13.03.2006, the petitioner was convicted under Sections 302/34 of Indian Penal Code, 1860 ('IPC') and Section 25 of Arms Act in FIR No. 254/2003, and *vide* judgment dated 09.08.2012, he was convicted under Sections 395/397 of IPC in FIR No. 41/2011. He was sentenced to undergo imprisonment for life by the learned Trial Court in both these cases. His appeals against conviction i.e., CRL.A. 217/2006 and CRL.A. 1504/2013 were dismissed by Hon'ble Division Benches of this Court *vide* judgments dated 20.07.2009 and 05.11.2014 respectively.

3. Learned counsel for petitioner argues that the petitioner has remained in judicial custody for more than 17 years, in relation to the present cases. It is stated that petitioner was awarded life imprisonment in two cases i.e. FIR. No. 254/2003 and FIR No. 41/2011, and both sentences are running concurrently as had been directed *vide* order dated 09.08.2016 passed by this Court in *W.P. (Crl.) 1400/2016*. It is submitted that the petitioner was also convicted on 11.10.2012 in FIR No. 30/2011, registered at P.S. Nabi Karim under Sections 380/457 of IPC, but he was sentenced for the period already undergone. It further stated that the petitioner was



acquitted in three other cases registered against him. It is stated that the petitioner had applied for parole in the present cases, however, the respondent/competent authority, without appreciating the contents of the application, had dismissed the same on 06.07.2023. It is argued that the respondent has failed to appreciate the fact that release on parole is a wing of reformatory process, which is expected to provide opportunity to the prisoner to transform himself into a useful citizen for maintaining the social ties. It is further argued that the rights of a foreign national cannot be based on the prejudice that he is foreigner and that he may abscond, since the same is in absolute violation of Article 14 of the Constitution of India. It is further submitted that after the petitioner had preferred an appeal i.e. CRL.A. 217/2006 against his conviction before this Court, he was released on bail, but upon dismissal of his appeal in the year 2009, he could not surrender before the jail authorities since he is a poor illiterate man and was not aware that his appeal had been dismissed. It is stated that the petitioner was then arrested in another case on 11.03.2011, and he has been serving the sentence in jail since then. It is argued that the family of the petitioner consists of his old mother, wife, minor daughter and married sister. It is stated that the mother of the petitioner is aged approximately 70 years and is presently residing in Bangladesh with the petitioner's wife and minor daughter, while his married sister is residing in Delhi. It is stated that the father of the petitioner had passed away in the year 2019 while the petitioner was in judicial custody. It is submitted that the petitioner has a married sister residing in Delhi with her husband and son, with whom the



petitioner shall reside if he is released on parole. Therefore, it is prayed that the present petition be allowed.

4. On the other hand, learned ASC for the State argues that the respondent/ competent authority has passed a well-reasoned order, dismissing the application seeking parole filed by the petitioner herein. It is argued that the petitioner has been convicted and sentenced to life imprisonment in two cases, and has been involved in some other cases also. It is also submitted that petitioner is a foreign national i.e. citizen of Bangladesh, and he can abscond if released on parole, more so because he had earlier not surrendered before the jail authorities after his appeal against conviction was dismissed by this Court. However, it is submitted by learned ASC that as per direction of this Court, police has now conducted a verification regarding the factum as to whether the sister of the petitioner is married to an Indian Citizen or is a permanent resident of India, since petitioner wants to stay with her. In this regard, it is stated that the enquiry was conducted at residence of petitioner's sister Shabana Begum at C-11, Street No. 6, Brijpuri, Krishna Nagar, Delhi, and identity proofs of the petitioner's sister and her husband Mohd. Jamil were obtained, which were found to have been registered on the same name and address. Moreover, their passport copies were also obtained and were verified from Regional Passport Office, Delhi. It is further stated that statements of neighbors namely Md. Tahrim and Md. Mustaqeem have been recorded, who also have verified and reiterated the facts that Md. Jamil is the husband of Shabana Begum. In these circumstances, it is submitted that an appropriate order may be



passed in the present case, considering the overall facts and circumstances.

5. 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.

6. In the present case, the application seeking parole filed by the petitioner was dismissed by the respondent/competent authority, *vide* the following order:

“...”1. 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:

(IV). Convicted foreigners subject to prior approval of Ministry of Home Affairs & Ministry of External Affairs and having valid permission to stay in India. In this case, the above said convict is a foreign national of Bangladesh, keeping in view of the gravity of the offence, the parole has been rejected in view of the above rule.

2. The prison Department has recommended that the request of said convict for grant of parole on the ground of filling SLP in Supreme Court being generic, does not attract exceptional conditions to qualify relief under Rule 1211 of Delhi Prison Rule-2018.

3. Further, as per nominal roll, the above said convict did not surrender after dismissal of his appeal for serving his remaining sentence. Moreover, he was arrested in other case. He was also convicted in two other cases.”

7. This Court notes that the petitioner herein has remained in judicial custody for a period of about 17 years and 06 months, excluding the period of remission earned by the petitioner which is more than 05 years. He had earlier remained in custody between the period 01.08.2003 to 19.09.2007, i.e. till the time his sentence was suspended by this Court in the appeal. Though his appeal was



dismissed in the year 2009 and he was directed to surrender forthwith, he failed to surrender before the jail authorities and was arrested in another case in the year 2011. However, since 11.03.2011, the petitioner has continuously remained in judicial custody.

8. As far as other cases against the petitioner are concerned, this Court notes that the petitioner is presently lodged in jail in relation to two cases where he has been awarded imprisonment for life, but the same have been ordered to run concurrently. Further, he has been sentenced to the period already undergone in one other case. In three other cases, the petitioner has already been acquitted.

9. It is also important to note that during the entire period of more than 17 years and 06 months of actual custody, the conduct of the petitioner has remained satisfactory in the jail. This is clearly reflected from the nominal roll on record, which mentions the conduct for last one year as well as the overall conduct of the petitioner as 'satisfactory'. Thus, there has been no report of commission of any prison offence, whether minor or major, by the petitioner during the entire period of his incarceration. Moreover, he has been working as a *langar sahayak* in the jail.

10. This Court, while deciding the present petition, has to balance the rights of the State as well as the rights of a convict, especially in cases such as the present one, where the period of incarceration excess 17 years, and where the petitioner has not come out of the prison, even on a single occasion, in the last more than 13 years. The Delhi Prison Rules, 2018 itself elucidates the aim and object of granting parole to a prisoner, in the following words:



“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..."

11. The address of the petitioner's sister, who resides in Delhi, has been verified by the State, as per the status report filed on record. The petitioner herein undertakes to reside at the said address, if he is released on parole.

12. Therefore, in view of foregoing observations and considering the overall facts and circumstances of the case, this Court is inclined to grant parole to the petitioner, for a period of four weeks, 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, who shall be his family member, to the satisfaction of the Jail Superintendent concerned.

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 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/mobile number shall be kept active and operational at all the times by the petitioner.

iv. The petitioner shall not leave Delhi NCR during the period of parole.

v. Immediately upon the expiry of the period of parole, the petitioner shall surrender before the Jail Superintendent.

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 along with pending application, if any, is disposed of.

14. A copy of this order be sent by the Registry to the Jail Superintendent concerned forthwith.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 26, 2024/zp