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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 03.01.2024
Pronounced on: 08.01.2024

+ W.P.(CRL) 3015/2023

BIJENDER@VISHNU

..... Petitioner

Through: Mr. Faraz Maqbool (DHCLSC)
 with Mr. Chandan Kumar, Ms.
 Chinmayi Chatterjee, Ms.
 Vismita Diwan & Ms. Sana
 Juneja, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Nandita Rao, ASC for the
 State with Mr. Amit Peswani &
 Mr. Jasraj Singh Chhabra,
 Advocates.
 S.I. Mahendra Koli, P.S.:
 Bhalaswa Dairy.

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 petitioner seeking issuance of writ in the nature of mandamus directing the respondent to release the



petitioner on parole for a period of three (03) months.

2. Brief facts of the case are that the petitioner was arrested in case arising out of FIR No. 694/2016, registered at Police Station Bhalswa Dairy, Delhi under Sections 302/147/148/149/120B/34 of Indian Penal Code, 1860 ('IPC'). He was convicted by the learned Trial Court, and *vide* order on sentence dated 21.08.2018, he was sentenced to undergo rigorous imprisonment for life alongwith payment of fine of Rs. 12,000/-, for offence under Section 302 of IPC; rigorous imprisonment for two years alongwith payment of fine of Rs. 2,000/- for offence under Section 147 of IPC; and to undergo rigorous imprisonment for three years alongwith payment of fine of Rs. 5,000/- for offence under Section 148 of IPC. The petitioner had filed an appeal against his conviction i.e. Crl. Appeal No. 926/2018 before this Court, which was dismissed *vide* judgment dated 26.06.2023.

3. The petitioner is currently lodged in Central Jail No. 05, Tihar, Delhi, and has undergone incarceration of about 06 years and 11 months, excluding remission of about 02 years. By way of present petition, he seeks parole on the ground that he wants to file Special Leave Petition ('SLP') before the Hon'ble Apex Court, assailing the orders/judgments *vide* which he was convicted and his conviction was upheld, in the present FIR, as well as on ground of maintaining social ties with family.

4. Learned counsel for the petitioner states that the petitioner had approached the competent authority for grant of parole for filing SLP



before the Hon'ble Apex Court, however, his application was dismissed *vide* communication no. F.18/46/2023/HG/2092 dated 20.07.2023, while relying upon Rule 1213 (xi) of Delhi Prisons Rule, 2018. It is argued that the competent authority has denied parole to the petitioner in a mechanical manner, and has ignored that as per Rule 1208, filing SLP before Hon'ble Supreme Court of India is one of the grounds for seeking parole. It is also stated that bar under Rule 1210 is also not applicable to the petitioner. It is further submitted that petitioner has remained behind the bars since 02.02.2017, and till date, he has only been released once on interim bail for a period of four weeks, for the purpose of repairing of his house and looking after his old-aged parents, from 31.05.2019 till 27.06.2019, and the petitioner had duly surrendered back in jail, within stipulated period. It is also stated that petitioner is a first time offender and is working as a *sahayak* in soap factory in Central Jail-05, Tihar Jail, Delhi. Therefore, it is prayed that present petition be allowed.

5. Learned ASC for the State, on the other hand, submits that the petitioner has committed a heinous offence, and he can file SLP from the jail itself, by taking recourse to a legal aid counsel.

6. This Court has heard arguments addressed by both the learned counsels, and has gone through the case file.

7. This Court has also gone through the nominal roll of the petitioner, which reveals that the petitioner is working as a factory *sahayak* in Central Jail No. 5, Tihar. The conduct of the petitioner in the



jail has been satisfactory and no major or minor punishment has been awarded to him on any occasion. He was also granted interim bail for a period of four weeks in the year 2019 and he had surrendered on time. The petitioner has never been released on regular bail since 02.01.2017, nor has he ever been granted parole or furlough.

8. The appeal filed by the petitioner herein, against his conviction, was dismissed by this Court *vide* judgment dated 26.06.2023. Thus, the petitioner now seeks parole to engage a counsel of his choice and to approach the Hon'ble Apex Court by filing of SLP.

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.



Since the only hope for petitioner would now be from the Hon'ble Apex Court as far as his conviction is concerned, he must be provided with an opportunity to pursue his legal remedy by filing SLP through the counsel of his choice.”

13. Therefore, considering the aforesaid facts and circumstances, this Court is inclined to grant parole to the petitioner for a period of 04 weeks 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.

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

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

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 8, 2023/at