



\$~74

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

+ **W.P.(CRL) 2219/2024**

ISHWAR LAL

.....Petitioner

Through: Mr. Shanu Baghel, Mr. Sudhir Kumar,
Mr. Ganpat Ram, Mr. Vivek Kumar,
Mr. Yash Chaudhary, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC with Ms.
Charu Sharma, Mr. Arjit Sharma, Mr.
Vaibhav Vats, Mr. Nikunj Bindal,
Advocates with SI Rakkishan, PS:
ANTF, Crime Branch, Delhi.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

14.11.2024

%

1. This petition is filed seeking directions to the respondent, to release the petitioner after commuting the default sentence to the period already undergone in FIR No. 23/2014 under Section 21 NDPS, PS Crime Branch.
2. The petitioner was convicted by judgment dated 17th September 2016 and by order on sentence dated 19th September 2016, whereby he was sentenced to RI for 10 years with fine of Rs.1 lakh and in default of payment of fine, to further undergo RI for 1 year.
3. Criminal appeal filed by the petitioner against his conviction was dismissed by the Court on 4th November 2020. Petitioner has completed the sentence of 10 years with satisfactory conduct and copy of custody certificate is on record. Since the petitioner belongs to a poor background, he could not



pay the fine and is therefore, serving the default term of one year RI, of which 4 months have already lapsed.

4. By this petition, he seeks directions that his default sentence be commuted to the period already undergone.

5. Prior writ petition being No. W.P.(CRL) 1147/2024 was moved for release and modification of the default sentence, which was withdrawn by petitioner on 10th April 2024.

6. Counsel for petitioner relies upon decision of the Bombay High Court in WP (Crl.) 114812024 dated 27th June 2024 to contend that in special circumstances High Courts can commute the default sentence as well. Petitioner additionally relied upon the para 31 of ***Shantilal v State of M.P.*** (2007) 11 SCC 243.

7. ASC for State points out that the said judgment by Supreme Court was passed in an appeal therein against the judgment of the High Court of Madhya Pradesh confirming an order of conviction of sentence recorded by the ASJ. The same relief cannot be awarded in a writ petition.

8. ASC for State has submitted that not only that this Court dismissed the appeal of the petitioner on 04th November, 2020 but also a subsequent W.P.(CRL) 1147/2024 was withdrawn by petitioner, which had sought directions for release of petitioner, after modification of default sentence of 1 year. In this regard, he points out that this Court has observed the following in the said order dated 10th April, 2024, extracted as under:



1. 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 preferred on behalf of the petitioner with the following prayer:

"a) Issue a writ in the nature of 'Mandamus and any other appropriate writ, directing the respondent to release on the petitioner after modification of default sentence of one year."

2. Issue notice. Learned ASC for the State appears on advance notice and accepts notice.

3. Learned counsel for the petitioner submits that the petitioner was convicted under Section 21(c) of NDPS Act vide judgment dated 17.09.2016 and sentenced vide order dated 19.09.2016 to undergo RI for a period of 10 years alongwith fine of Rs. 1,00,000/- (in default of payment of fine to undergo RI for one year). The aforesaid judgment and order on sentence was upheld in CRL.A. 59/2017 vide judgment dated 04.11.2020 and petitioner is stated to be undergoing sentence in default of payment of fine, after completion of his substantive sentence for a period of 10 years.

4. Learned counsel for the petitioner contends that owing to poor background, petitioner is unable to pay the fine amount and as such prays that petitioner may be released on imprisonment undergone, after modification of orders on sentence upheld in appeal.

5. Learned ASC for the State submits that by way of present writ petition, petitioner seeks review of judgment dated 04.11.2020 passed in appeal and the same is not permissible in law. It is further urged that the only remedy available to the petitioner is to challenge the judgment dated 04.11.2020 passed in appeal, in case he is aggrieved by sentence.

6. It is well settled that inherent powers under Section 482 Cr.P.C. are intended to prevent the abuse of the process of Court or secure the ends of justice. The powers under Article 226 of the Constitution of India & Section 482 Cr.P.C. cannot be used for the purpose of modification / review of sentence passed in Appeal by this Court in view of express bar under Section 362 Cr.P.C. 1973. As such, the contentions raised on behalf of the respondent opposing the maintainability of the present petition, is of considerable merit.

7. At this stage, learned counsel for the petitioner seeks to withdraw the petition with liberty to pursue appropriate remedy in accordance with law.



8. Taking the statement of learned counsel for the petitioner on record, petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

9. This writ petition again seeks similar relief for release of the petitioner after commuting the default sentence.

10. Considering these above facts and circumstances, the Court is of the view that said petition is not maintainable and nature of relief being sought by the petitioner cannot be granted in this writ petition, considering that the appeal against the sentence was already dismissed by the Court.

11. Accordingly, petition is dismissed in the above terms.

12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 14, 2024/RK

Click here to check corrigendum, if any