



2024:DHC:6041



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 6th August, 2024***
+ **W.P.(CRL) 3296/2023**

SHIVAM SINGH@ NANHE

.....Petitioner

Through: Ms. Tara Narula and Mr.
Harshvardhan Jain, Advocates.

versus

STATE OF NCT OF DELHI)

.....Respondent

Through: Ms. Rupali Bandhopadhyia, ASC for
the State with SI Ravi Beniwal, PS
Govind Pur.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (*hereinafter referred to as 'CrPC, 1973'*), has been filed on behalf of the petitioner, for quashing the Rejection Order No. F.18/52/2023/HG/2684 dated 18.09.2023 and to direct the release of *the petitioner on parole for a period of eight weeks for engaging the counsel/pleader of his own choice for filing his SLP* before the Hon'ble Supreme Court of India.

2. The petitioner states that he is confined in Jail No. 14, Mandoli, Delhi in FIR No. 525/2015 under Section 302 of the Indian Penal Code (*hereinafter referred to as 'IPC, 1860'*), registered at Police Station Govind



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Puri and has been convicted by the learned Trial Court vide Judgment dated 27.05.2019 and sentenced to Life *vide* order on sentence dated 04.06.2019. *Criminal Appeal No. 1108/2019 was preferred against the conviction and sentence but has been dismissed by this Court vide Judgment dated 24.05.2023.*

3. The petitioner has already undergone about eight years and six months (excluding remission), out of his sentence of R.I. for Life. He had moved an Application seeking Parole from respondent *vide* his Letter dated 26.07.2023, to file an SLP seeking Parole before the Hon'ble Supreme Court of India, but the same has been rejected *vide* Order dated 18.09.2023.

4. The petitioner has filed the present Petition seeking eight weeks Parole on the ground that the respondent failed to consider that the convict is not barred from seeking Parole under Delhi Prison Rules, 2018 and it is the discretion of the competent authority, to grant Parole under special circumstances, i.e. to engage a counsel for filing of SLP. In similar circumstances, the Parole has been granted even though the conduct of the prisoner had been unsatisfactory in the last year.

5. Learned counsel for the petitioner has placed reliance on W.P.(Crl.) No. 1330/2010, titled as Vijender @ Bididi vs. The State of NCT of Delhi, dated 10.12.2010; Rakesh @ Diwan vs. State of NCT of Delhi; 2022: DHC: 1724; Vijender @ Bididi vs. State of NCT of Delhi, 2010: DHC: 6010; Amit Gulia @ Andal vs. State of NCT of Delhi, 2024: DHC: 4534.

6. It is further submitted that the family of the petitioner, consists of his old and ailing parents, who were residing in Ward No. 2, Transit Camp Rudrapur, District – Udham Singh Nagar, P.S. Transit Camp, Rudrapur. If the Parole is granted, he would also be able to reside with his family



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members. His one of the family members, shall stand as surety for him. He undertakes to abide by all the terms and conditions and seeks release for a period of eight weeks, for the purpose of engaging the counsel, to file the SLP, before the Hon'ble Supreme Court of India.

7. **A Status Report** has been filed by the respondent wherein they have submitted that the address of the petitioner of Rudrapur, has been verified and it is found that the parents of the petitioner, are residing at the given address.

8. *Learned counsel for the petitioner*, has argued that even if the conditions of grant of Parole/furlough are not satisfied, in the special circumstances of an SLP which is required to be filed, the Court may give an indulgence and grant the relief for eight weeks, as has been sought by way of the present Petition.

9. **Learned ASC for the State**, has vehemently opposed the prayer and has submitted that in the past two years, four major punishments and one minor punishment has been imposed upon the petitioner, as per the Delhi Prison Rules. The furlough/parole cannot be granted in case there are Major punishments are imposed in the last two years on the petitioner. Because of the unsatisfactory conduct of the petitioner, he is not entitled to the relief as sought.

10. **Submissions heard.**

11. The petitioner's application for grant of parole for filing the SLP before the Supreme Court has been rejected vide Order dated 18.09.2023 which observes as under :

“With reference to your office letter F.14/SCJ-14/AS(C-II)PAROLE/2023/4537 dated 26.07.2023, on the subject



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cited above, I am to inform you that the request in respect of the above said convict for 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 (II) of Delhi Prison Rules' 2018, which states that:-

Rule 1210 sub rule (II):- "The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application". In this case, punishments dated 08.02.2023 & 10.02.2023 awarded to the above said convict are the major punishments as per Rule 1271 of Delhi Prison Rules, 2018.

2. Further, as per nominal, the last one year jail conduct and overall jail conduct of the above said convict is reported to be unsatisfactory being multiple punishments. The Superintendent Jail has also not recommended grant of parole to said convict."

12. Essentially, the Parole application has been rejected on the ground that punishments dated 08.02.2023 and 10.02.2023 awarded to the convict, were the major punishments as per Rule 1271. The latest Nominal Roll shows that the punishment was awarded to the petitioner on 11.07.2023 for misbehaviour with jail staff for which one week canteen facility was stopped. The last punishment was of 20.09.2023 when on account of fighting with another inmate, warning was given by SC (Jail). Prior to that on 18.05.2023, he had been given a warning for fighting with another inmate and on 10.02.2023 on account the convict trying to tarnish the image of Jail



Administration, had suffered the punishment of fifteen days of stoppage *mulakat*, phone, and canteen facilities.

13. Rule 1271 (a) and (b) Jail Prison Rules, defines the minor and major punishments, which reads as under :

“1271. The following punishment(s) may be awarded by the Superintendent to prisoners for committing any prison offence. These are classified into minor punishments and major punishments.

(a) Minor Punishments

I. Formal warning which shall be personally addressed to the prisoner by the Superintendent and recorded in the punishment book.

II. Loss of privileges given to the prisoners in detention for a maximum of one month

III. Forfeiture of earned remission up to ten days.

(b) Major Punishments

I. Forfeiture of remission up to a period of thirty days at any one time or with the approval of the Inspector General remove a prisoner from the remission system up to a period of six months; Provided that the Inspector General shall have power to forfeit all earned remissions, other than remissions given by the Government, or to remove a prisoner from the remission system for the entire period of his imprisonment;

II. Stoppage of recreational facilities up to a period of one month or canteen facilities for a period of 1 month or stoppage of interviews for a period of up to three months;

III. In case of breaches and violations in conditions of release on parole or furlough, not counting the said period towards imprisonment.

IV. Segregation up to a period of three months and with the sanction of the Inspector General, up to a period of six months.

V. Monitoring under watch and security

VI. In case of any damage to Government property, recovery of cost for such damage after proper enquiry



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effective with judicial appraisal.

VII. Inmate calling system stoppage up to 1 month.

VIII. Forfeiture of recovered/seized money.”

14. In the present case, the last punishment has been imposed on 20.09.2023. The question is whether the petitioner can be granted parole for eight weeks for the purpose of filing of the SLP. In this regard reference may be made to **Rule 1211 (VII) of Delhi Prisoners' Rule, 2018**, which reads as under:

“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;

(VII) If prisoner is convicted under POCSO. In this case, as per crime detail, said convict committed offence punishable under POCSO Act.

Further, no special circumstances exist for grant of parole as the convict may file SLP from jail itself where free legal aid facility is available to all prisoners.”

15. It is quite evident from the perusal of the Rules that it does not in any way limit the discretion of the Court in granting parole in special circumstances. The objective of releasing a prisoner on parole and furlough has been defined in Rule 1200 of Prison Rules which is essentially to enable the inmate to maintain continuity with the family, to enable him to maintain and develop his self confidence; to remain psychologically and physiologically healthy and to remain in touch with the outside world and to enable him to recover/overcome from the stress and evil effect of incarceration.

16. In the present case, though there were punishments inflicted on the petitioner, but they are essentially in the nature of warning on account of



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fight with other inmates. It cannot be overlooked that he has been in jail for almost nine years with no furlough and has never stepped out of the jail. Here is a situation where he needs to file a SLP against the conviction and the sentence which has been upheld by this Court in an Appeal.

17. It is a constitutional right recognized under Article 22(1) of the Constitution and Section 303 of Cr.P.C. for the accused to be able to engage a counsel/pleader of one's own choice. It has been observed by the Co-ordinate Bench of this Court in Rakesh @ Diwan vs. State of NCT of Delhi, W.P(CRL.) 480/2022 decided on 05.05.2022 that no doubt Legal Services Authority at all level endeavoured to provide excellent legal assistance to those in prison, but to deny a convict an opportunity to engage a counsel of his choice would be violative of his constitutional right. In fact, State Prison Rules, 2018 dealing with parole and furlough, recognize that regular parole can be granted under Rule 1208 to a convict to pursue the filing the SLP before the Supreme Court.

18. Considering the purpose for which the parole is sought, i.e. for filing the SLP in the Supreme Court, *the petitioner herein is granted parole for a period of eight weeks from the date of his release subject to furnishing of a personal bond and surety bond in the sum of Rs.10,000/- each, to the satisfaction of Jail Superintendent and subject to further following conditions:*

- (i) The petitioner shall not leave NCR Region without informing the local SHO;
- (ii) The petitioner shall furnish his mobile phone/landline number and residential address as well as that of his surety to the jail Superintendent/SHO and both shall keep their mobile/landline



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phones operational at all times during the parole period and in the event of any change of the same, will immediately inform the same to the Jail Superintendent/SHO; and,

- (iii) The petitioner shall drop a pin location on Google Maps so that his location is available to the Jail Superintendent/SHO.

19. The petition is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 06, 2024
RS/VA