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

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Reserved on: 04.03.2024

Pronounced on: 20.03.2024

+ **W.P.(CRL) 3347/2023**

VIKASH @ AALU

..... Petitioner

Through: Mr. Vinayak Bhandari, Ms. Jaisal Singh and Ms. Teesta Mishra, Advocates.

Versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel along with Inspector Pawan Kumar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present 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 grant of parole for a period of four weeks on the ground of filing Special Leave Petition ('SLP').

2. Brief facts of the case are that the petitioner is currently lodged in Central Jail No. 15, Mandoli, Delhi, and he was convicted for offence punishable under Section 302 of Indian Penal Code, 1860



(‘IPC’) by the learned Trial Court in case FIR No. 502/2017, registered under Sections 302/120B/34 of IPC at Police Station Alipur and was sentenced to undergo rigorous imprisonment for life *vide* judgment and order on sentence dated 22.09.2018 and 24.09.2018 respectively. The Criminal Appeal No. 1195/2018 filed before this Court was dismissed and the conviction of the petitioner was upheld by this Court *vide* judgment dated 26.06.2023.

3. Aggrieved by the aforesaid, the petitioner wishes to file an SLP before the Hon’ble Apex Court, challenging his conviction in the present FIR. For this purpose, the petitioner had filed an application on 12.08.2023 seeking his release on parole for a period of four weeks on the grounds of filing SLP. However, on 06.09.2023, the Jail Superintendent concerned had himself rejected the application filed by the petitioner without forwarding the same to the competent authority. This has compelled the petitioner to approach this Court.

4. Learned counsel for petitioner argues that the petitioner is seriously aggrieved by the non-action on part of respondent no. 2 i.e. Jail Superintendent, Central Jail No. 15, Mandoli, of not forwarding his application for grant of parole on ground of filing SLP, to the competent authority. It is argued that on the contrary, the Jail Superintendent had proceeded to consider the application for parole on his own, despite being well-aware that he is not the competent authority for considering application for parole as per Delhi Prison Rules, 2018. It is submitted that the present petition raises concerns



about the valuable rights of the petitioner for making his representation to the competent authorities and forwarding of the same by the jail Superintendent in a timely manner without undue delay. It is stated that more than two months had elapsed since the petitioner had sent his application for release on parole, however, he had not received any reply from the competent authority and when he had enquired about the status of his parole application in the first week of October, 2023, he was informed that the same had been dismissed by respondent no. 2 on the ground that the petitioner is an undertrial prisoner in some FIRs as well. It is vehemently argued that the Jail Superintendent, despite not having any jurisdiction to adjudicate the application for parole, has decided the said application and has proceeded to pass the impugned order dated 06.09.2023 thereby dismissing the parole application. It is stated that it was his duty to forward the application for parole to the Home Department / competent authority within a period of four weeks. It is also stated that Rule 1209 on which the respondent no. 2 has relied upon to reject the application completely misplaced since the embargo of Rule 1209 for grant of parole is limited to the undertrial prisoners seeking regular parole. It is stated that the parole is being sought by the petitioner in FIR No. 502/2017 wherein his conviction has been upheld by this Court in Crl. Appeal No. 1195/2018. It is stated that he is not an undertrial and is not seeking parole as an under Trial. It is stated that the petitioner is loosing limitation period to file the SLP in



the absence of any adjudication by the competent authority on his application for release on parole. It is therefore, prayed that this Court may exercise its writ jurisdiction and issue a writ quashing the impugned order dated 06.09.2023 passed by respondent no. 2 and also issue a writ in the nature of mandamus directing the release of the petitioner on parole for a period of four weeks and further directions to respondent no. 2 to comply with the mandatory requirements of Delhi Prison Rules, 2018 and forward the application to grant of parole without undue delay.

5. Status report has been filed by the State, wherein nothing connected with the present petition has been mentioned except for reiterating the facts of the case in question in which he has been already convicted. However, two statements were filed on record wherein it was stated that the address mentioned in the application of the petitioner herein for his stay could not be verified since some other person is staying at the said address who has given a statement that the present applicant has left the address about five years back and his present whereabouts are not known to him.

6. Learned Standing Counsel for the State argues that six punishment tickets have been awarded to the present petitioner for violation of prison rules between the year 2020-2022.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.



8. This Court has gone through Annexure P-1 which is the application filed by the petitioner seeking his release on parole. The said application has not been forwarded to the competent authority, and rather a noting has been made in hand by the Jail Superintendent concerned that *“Abovementioned CTP is not eligible for grant of parole and furlough in view of Rule 1209 of DPR, 2018. He is also facing trial in 77/18, PS Spl. Cell and 2 other cases (not on bail). In view of the above, may not be allowed.”* and it was stated that he may be informed accordingly. For reference, this portion of application filed by the petitioner is extracted hereunder:



9. The Jail Superintendent i.e. respondent no. 2 has straightaway rejected the application filed by the petitioner on the ground that he is not entitled to seek parole in light of bar under Rule 1209 of Delhi Prison Rules, 2018. Rule 1209 reads as under:



“1209. Under-trial prisoners are not eligible for regular parole and furlough, however, may be released on custody Parole, that too by the order of the concerned trial court. It is clarified that where an appeal of a convict against conviction is pending before the High Court, regular parole will not be granted since the convict can seek appropriate orders from the High Court.

10. However, this Court finds merit in the argument of the learned counsel for petitioner that the petitioner herein had sought parole, in connection with case FIR No. 502/2017, registered at Police Station Alipur, in relation to which he has already been convicted and the conviction has been upheld by this Court, against which the petitioner wishes to prefer an SLP before the Hon’ble Apex Court. Though there are some other criminal cases against the petitioner which are pending trial, the petitioner cannot be *prima facie* termed as an undertrial prisoner since he has been convicted in one of the FIRs. Rule 1210 of Delhi Prison Rules specifically provides the criteria to be fulfilled by a ‘convict’ to be entitled to release on regular parole. Thus, as it appears from a cursory reading of the Delhi Prison Rules, the Jail Superintendent has erred in observing that the petitioner is dis-entitled to seek parole in view of bar under Rule 1209, which is *qua* undertrial prisoners.

11. However, the main grievance of the petitioner herein is that the Jail Superintendent concerned had not forwarded the application to the competent authority, in defiance of the Delhi Prison Rules. In this



regard, some of the relevant Rules governing the procedure for disposal of applications are extracted hereunder:

“1207. **The Competent Authority to consider the cases for granting or extending regular Parole, other than cases falling under Rule 1211, is Lieutenant Governor of Government of National capital Territory of Delhi or any other officer** of Government of National capital Territory of Delhi to whom the power may be delegated by the Lieutenant Governor in this regard. However, for the cases falling under Rule 1211, the Competent Authority will be the Government Lieutenant Governor of Government of National capital Territory of Delhi.”

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1213. The following **procedure** would be followed while processing the application for parole and thereafter:-

i. An **application** for grant of parole **may be submitted** by the Prisoner or family members **to the Superintendent of Jail.**

ii. The application must contain the following details:

iii. The Superintendent of Jail will maintain a Parole Register. Upon receipt of the application, the Superintendent of Jail would make an entry in the Register immediately. **The Superintendent would verify the grounds stated in the application** upon an oral interview with the prisoner and shall make specific recommendations with regard to the grounds taken by the convict in the nominal role.

iv. The Superintendent of Prison will then forward a copy of the application to the police station concerned where the FIR was registered, the police station concerned of the last known address & where he wishes to stay and the investigating agency of the case, if any for their report.

v. The report from above said police stations & investigating agency will be based upon a fair enquiry.

vi. The report by the police station (if within NCR) shall be furnished by the concerned police station in the format



prescribed in the schedule, within two weeks from the date of receipt of the copy of the said application at the police station.

vii. If the report is not received within two weeks, from the concerned police station, the Superintendent of Jail will send a communication in writing to the Deputy Commissioner of Police of the concerned District with a copy to the concerned police station requiring the submission of a report within two weeks from the date of receipt of the communication.

viii. In case verification report is required from the police of any other State, the same should be sought from the concerned Deputy Commissioner of Police/Senior Superintendent of Police of the District concerned. The said report shall be furnished by the concerned authority in accordance with the form prescribed in the Schedule within two weeks of the receipt of the copy of the application for parole.

ix. In case a report from the concerned police station through the Deputy Commissioner of Police/Senior Superintendent of Police of the District is not received within two weeks, the Superintendent of the Jail shall forward a communication in writing to the Director General of Police of the State concerned for submission of the report within two weeks from the date of receipt of the said communication.

x. If no report is received by the Superintendent of Jail within the periods aforementioned, it shall be presumed that the concerned police authorities have no objection to parole being granted.

xi. The application, would then have to be immediately forwarded to the Deputy Secretary Home, Govt. of NCT of Delhi with a forwarding note to the effect that since no report had been received from the concerned police authorities, it is presumed that they had no objections to the grant of parole and the application be disposed on merits.

Provided that the Superintendent, before forwarding the application for parole, should ensure that if the prisoner is eligible for furlough then his release on furlough be considered before forwarding his application for parole and certificate in this regard be annexed with the application.



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1215. The Superintendent of prisons will forward to the Deputy Secretary Home the following in two sets:

- I. Application of the convict;
- II. Police report, if any; copies of communications with Police Authorities in case no police report has been received within the prescribed period as specified above;
- III. Specific recommendation of the Superintendent of Jail.
- IV. In case of convicts falling under Rule 1211, the Inspector General (Prisons) and the Probation officer will also submit their reports & views in order to ascertain his propensity to commit crime.
- V. Nominal rolls of the convict as provided in appendix- 15;
- VI. Medical report of the convict where parole is sought on medical grounds;
- VII. Any other relevant documents.

12. From a bare reading of the above Rules, it becomes apparently clear that the applications filed by the prisoners seeking parole are to be decided by the competent authority, which is either the Lieutenant Governor of Delhi or any other officer empowered by him, as the case may be. On the other hand, the role of a Jail Superintendent is to receive an application filed by a prisoner, examine its contents and verify the grounds, and record his recommendation, whether positive or negative, and thereafter forward the application along with other documents as contemplated under Rules 1213 and 1215 to the Deputy Secretary Home, so that the same may be decided by the competent authority.



13. In the present case, however, there is nothing on record to show that the concerned Jail Superintendent had forwarded the application filed by the petitioner to the competent authority. Rather, as it appears from the material placed on record and as noted above, the Superintendent had himself decided the application filed by the petitioner and had come to a conclusion that the petitioner was not entitled to grant of parole, that too by citing a Rule which *prima facie* appears inapplicable in the present case, without forwarding the same to the competent authority.

14. Whatever be the fate of petitioner's plea of parole, the same ought to have been forwarded to the competent authority by the Jail Superintendent so that the same could have been decided and disposed of, and if the result would have been the rejection of his application, the petitioner could have approached this Court assailing the order passed by competent authority. But this procedure, as per Delhi Prison Rules, has not been followed in the present case.

15. Therefore, in view of the aforesaid, it is directed that the application dated 12.08.2023 filed by the petitioner before the Jail authorities, seeking parole on the ground of filing SLP, shall be immediately forwarded by the Jail Superintendent, as per Delhi Prison Rules 2018, to the competent authority. The competent authority is directed to decide the same within a period of two weeks from receipt of same, under intimation to the petitioner.

16. In above terms, the present petition is disposed of.



17. Copy of this order be communicated to the concerned Jail Superintendent forthwith for information and compliance.
18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 12, 2024/ns