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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14.05.2024***Pronounced on: 30.05.2024***

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W.P.(CRL) 3420/2023**VISHAL****..... Petitioner**Through: **Mr. Kushdeep Gaur, Advocate**
(appeared through VC)**Versus****STATE NCT OF DELHI****..... Respondents**Through: **Mr. Sanjeev Bhandari, ASC**
for the State with Ms. Anvita
Bhandari, Mr. Kunal Mittal,
Ms. Charu Sharma, Mr. Arjit
Sharma and Mr. Vaibhav Vats,
Advocates.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr. P.C. ') by the petitioner for quashing of order No.F.18/100/2013/HG dated 16.05.2023 passed by the respondent and for 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. The petitioner is presently lodged in Central Jail No. 02, Tihar, New Delhi. By way of judgment dated 29.02.2012 passed by the



learned Additional Sessions Judge, Tis Hazari Courts, Delhi, the petitioner herein was convicted in case arising out of FIR bearing No. 378/1994 for offences punishable under Sections 364-A/34 of the Indian Penal Code, 1860 (‘IPC’) and had been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. Thereafter, the petitioner had challenged the said judgment before this court i.e., CRL. A. 853/2012 and this Court *vide* judgment dated 28.09.2012 had dismissed the said appeal. The petitioner had then preferred a Special Leave Petition bearing Diary No.25172/2014 before the Hon’ble Supreme Court against the judgment of this Court, which had also been dismissed *vide* order dated 07.01.2015.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner herein could not attend the last rites of his son and was only granted custody parole for a few hours on 03.02.2023. It is submitted that the petitioner has already undergone incarceration for more than 12 years and has been granted parole by this Court on several occasions and he has never misused the liberty granted to him and has always surrendered on time. It is also submitted that the impugned order dated 16.05.2023 rejecting the parole, passed by the competent authority is silent on the aspect that the petitioner wants to re-establish social ties with family members, needs to be with his family at this hard time when death of a young member has occurred. It is accordingly prayed that the petitioner be entitled to parole on the above grounds.



4. On the other hand, learned ASC appearing on behalf of the State opposes the present petition and submits that the petitioner herein was earlier granted parole and furlough on two occasions but he had jumped the same. It is also stated that as per the nominal roll, his overall jail conduct is reported to be unsatisfactory. Therefore, it is prayed that the present petition be dismissed.

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 petitioner's application by virtue of which he had sought grant of parole was denied *vide* order dated 16.05.2023 by the competent authority. The said order is reproduced as under:

“1. The convict is not entitled for parole in view of Rule 1210 sub rule (IV) and 1212 Note (2) of Delhi Prison Rules’ 2018 which states that:-

Rule 1210 subrule (IV):-**“The convict should not have violated any terms and conditions of the parole or furlough granted previously”**. In this case, 02 weeks furlough from 21.12.2020 to 01.01.2021 was granted to the above said convict by the order of DG (Prisons), but he jumped the furlough from 05.01.2021 and surrendered on 30.03.2022.

Rule 1212 Notice (2):- “Simultaneous parole to co-accused is ordinarily not permissible, however, in exceptional circumstances competent authority may consider for reasons in writing for granting parole to co-accused who are family members.” In this case, as per nominal roll, his two co-accused namely Mukesh S/o Kiran Singh & Ravi @ Titu S/o Jai Bhagwan are on emergency parole.

2. As per nominal roll, his overall jail conduct is reported to be unsatisfactory. The Superintendent Jail has not



recommended grant of parole to the said convict. As per nominal roll, his one co-accused is absconding since 18.04.13 and another one also jumped the I/Bail w.e.f. 28.05.11 from CJ-5.

3. Further, as per police verification report received from SHO, PS Seema Puri, it is stated that the ground taken may not be genuine as the convict had already attended the rituals of his son Vikas after his death.”

7. This Court has gone through the order rejecting parole to the petitioner and is of the opinion that the present petitioner has jumped parole and furlough granted to him twice. Further, the co-accused persons involved in commission of the offence with the present petitioner are absconding and as per Rule 1212(II), since his co-accused persons are on emergency parole, he cannot be granted parole.

8. Additionally, having gone through the contents of the nominal roll placed on record, this Court notes that the petitioner herein has been incarcerated for approximately 12 years and 10 months. Further, this Court takes note of the fact that the petitioner herein was earlier granted parole/furlough on various occasions by the competent authority, but he had jumped the same on two occasions.

9. In this case, parole is being sought by the petitioner on the grounds that the petitioner wants to re-establish social ties with family members, needs to be with his family at this difficult time when death of a young member has taken place. The record reveals that the deceased is not the biological son of the petitioner and the petitioner only considered him as his son.



10. This Court in *Sonu Sonkar v. The Lt Governor, Delhi & Ors*, W.P.(CRL) 889/2024, has held as under:-

“(i) Grant of Parole: Relevant Prison Rules

27. Rule 1200 of the Delhi Prison Rules, 2018 lists out the objectives of granting parole or furlough to a prisoner. The said Rule reads as under:

“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.”

28. Rule 1203 provides the reasons for which custody parole can be granted to a prisoner, and the same reads as under:

“1203. “Custody Parole” may be granted to the convict by an order in writing, issued by the Superintendent Prison and to the under trial prisoners by the trial court concerned, for a period of not more than six hours, excluding the time taken to reach the destination and return to Prison, in the following eventualities:

- i. Death of a family member;



- ii. Marriage of a family member;
- iii. Serious illness of a family member or
- iv. Any other emergency circumstances with the approval of DIG (Range) of prisons.

Note: The prisoners who have been convicted by the trial court may avail custody parole from prison authorities though their appeals are pending before the higher courts.”

29. Rule 1208 further provides the grounds on which the competent authority can consider applications for parole:

“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.”

30. A perusal of the aforesaid Rules would reflect that prisoners are provided with the benefit of parole, *primarily* to extend them an opportunity to maintain family and social ties, or in cases of exigencies such as serious illness of a family member, death of a family member, marriage in the family, delivery of child by wife of convict, etc. Thus,



the term ‘family’ assumes great importance for the purpose of grant of parole under the Delhi Prison Rules.

31. The definition of ‘family’ is provided under Rule 1201 of the Delhi Prison Rules, which is as under:

“1201. The definition of a family of a prisoner for this chapter means grandparents, parents, brothers, sisters, spouse, children and grandchildren.”

32. Therefore, **the family of a prisoner would include his or her grandparents, parents, brothers, sisters, spouse, children and grandchildren, for whose illness, death, marriage, etc. can a prisoner seek parole under the Delhi Prison Rules”.**

(Emphasis Supplied)

11. In the present case, the petitioner has sought parole on the ground of death of a person who he claims to be like his son. However, since the deceased herein is not the biological son of the petitioner, he would not be covered under the legal definition of a ‘son/real child’ and thus, cannot be held to be covered within the definition of ‘family’ under Delhi Prison Rules, 2018, for the purpose of grant of parole.

12. Therefore, in this Court’s opinion, the petitioner is not entitled to grant of parole as per Delhi Prison Rules, 2018 on the aforesaid ground.

13. Accordingly, the present petition along with pending application stands dismissed.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 30, 2024/at