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

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Reserved on: 30.04.2024
Pronounced on: 02.05.2024

+ **W.P.(CRL) 3535/2023**

FEROZ AHMED BHATT

..... Petitioner

Through: Ms. Naiem Jahan Heena and
Mr. Raj Kumar, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Rahul Tyagi, ASC for the
State

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, order and/or direction to the respondent for releasing the petitioner on parole for a period of six weeks to reconnect social ties with the society and his family.

2. Brief facts of the present case are that the petitioner herein has been in judicial custody since 11.09.2003. The petitioner was convicted for committing offence under Sections 3(3)/3(5)/4/20 of



Prevention of Terrorism Act and Sections 121/121A/122/123 of Indian Penal Code, 1860, and Sections 4/5 of Explosives Substances Act, and was sentenced to undergo rigorous imprisonment for life. His conviction was upheld by this Court in *Crl. Appeal No. 308/2011* and by Hon'ble Apex Court in *SLP (Crl.) No. 7887-7888/2014*.

3. The petitioner states that he has been in judicial custody for more than 20 years and is presently about 44 years of age. He further states that he now wants to get married, and for the purpose of getting married, since his parents are looking for a bride for him, he be released on parole, as he also wishes to meet his old aged parents.

4. Learned counsel appearing on behalf of the petitioner argues that the petitioner has never been released on bail/interim bail/parole/furlough in last more than 20 years and he has been continuously in prison from the date of his arrest. However, even then, the conduct of the petitioner has been exemplary in the prison, and he is fully entitled to grant of parole. It is also stated that the address of the petitioner has also been verified. As far as the exceptional circumstances are concerned, it is stated that the fact that the petitioner has never been released in last 20 years, is in itself an extraordinary circumstance which warrants exercise of discretion in his favour.

5. Learned ASC for the State, on the other hand, opposes the present petition and argues that in cases of offences of terrorist activities and waging war against the country, the convicts ought not to be granted parole. It is also stated that the ground mentioned by the petitioner is also not a ground for grant of parole under the Prison



Rules and the same cannot be termed as an exception circumstance under Rule 1211 of Delhi Prison Rules, 2018. It is also submitted that the co-accused in this case, when granted parole, had absconded and joined terrorist organization. Therefore, it is prayed that the present petition be rejected.

6. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned ASC for the State, and has perused the material placed on record.

7. The competent authority had rejected the petitioner's application for parole *vide* order dated 18.09.2023, relevant portion of 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;

i. Prisoner convicted under sedition, terrorist activities and NDPS Act. In this case, as per crime details, the above said convict belongs to the terrorist organization Jaish-e-Mohammad (JeM) and entered into a conspiracy with his co-accused in order to commit terrorist acts to wage war against and to overawe the Govt. of India by use of criminal force and in pursuance thereof having collected and concealed arms ammunition and explosive substances.

ii. The Prison Department has recommended that the request for grant of parole on the ground of social ties being generic, does not attract exceptional conditions to qualify relief under Rule 1211 of Delhi Prison Rules-2018.

iii. Further, the Superintendent Jail has also not recommended grant of parole to the abovesaid convict. Police Authorities has also opposed the grant of parole to him.”

8. Having heard arguments and gone through the case file, this Court is of the opinion that the present petitioner who seeks parole as



his family is looking for a suitable match for him and to maintain social ties, has been convicted of offences relating to terrorist activities and waging war against the country, by the learned Trial Court, and his conviction and sentence were upheld by this Court as well as by the Hon'ble Apex Court.

9. This Court's attention has also been drawn to the Rule 1211 of Delhi Prison Rules, 2018, which provides that:

“1211. 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;

I. Prisoners convicted under sedition, terrorist activities and NDPS Act.

II. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime...”

10. As per the Rule 1211 of Delhi Prison Rules, the prisoners who are convicted for sedition and terrorist activities, should not be granted parole except in discretion of the competent authority and in special circumstances.

11. This Court takes note of the fact that the co-accused in this case itself i.e. Noor Mohammad Tantry was released on parole, however, instead of returning to jail after expiry period of his parole, he had joined terrorist organization regarding which case FIR No. 55/2017, under Sections 18/20/38 of ULA (P) Act was registered at P.S. Tral, Jammu & Kashmir. He was thereafter neutralized in an encounter with security forces on 25.12.2017 at Samboora regarding



which an FIR No. 219/2017, under Section 307 of RPC and Section 7/25 A. Act was registered at Police Station Pampore, Jammu & Kashmir. Moreover, a report received from Police Department, Avantipura, Jammu and Kashmir, where the present petitioner wants to reside, also mentions that there is a reasonable apprehension that in case the present petitioner is released, he will abscond and join terrorist ranks and further his release on parole will be detrimental to the overall security of the area in the larger security interest.

12. In the present context, it will also be useful to take note of the following observations of the Hon'ble Apex Court in case of *Asfaq v. State of Rajasthan* (2017) 15 SCC 55:

“20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims...

22. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity etc...”

13. This Court is of the opinion that the factum of petitioner being convicted in a heinous offence and there being an actual apprehension regarding his presence in the area being detrimental to the larger security interest, coupled with the fact that one of his co-accused had again joined a terrorist organisation after being released on parole and was later neutralized in an encounter, are the factors



which would come in the path of the petitioner's application for parole. Therefore, considering the aforesaid facts and circumstances, this Court does not find it a fit case for grant of parole.

14. However, this Court is conscious of the fact that the petitioner has also expressed his desire to meet his parents, whom he has not met and who cannot travel to Delhi. This Court is, thus, faced with a situation where it has to balance the interest of the State and the Country on the one hand, and the longing of an accused to see his parents, who are unable to travel to Delhi.

15. This Court does not overlook the fact that as per nominal roll, his conduct in the jail has been satisfactory over the last 20 years, except one punishment in the year 2010. Considering the same, this Court directs that the Superintendent Jail concerned will make one-time arrangement for the video call of the present petitioner with his parents, in case he so desires in writing, in order to provide him an opportunity to at least talk to his parents and see them virtually, if not in person. This may to some extent bring solace to him as a son that he could see his parents and could speak to them even if virtually.

16. With above directions, the present petition is disposed of.

17. Accordingly, the present petition stands dismissed.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 2, 2024/zp