



\$~17

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

W.P.(CRL) 3757/2023,CRL.M.A. 34937/2023

PARVEEN KUMAR

.....Petitioner

Through: Mr. Shannu Baghel and Mr. Sudhir
Kumar, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC for the
State with WSI Sanju Kumari PS
Palam Village

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.07.2024

%

1. The present Petition has been filed on behalf of the petitioner seeking the following prayer:

a) *Issue a Writ in the nature of mandamus and any other appropriate writs directing the Respondents to computation adding emergency interim bail period from 02.07.2020 to 26.03.2021.*

2. It is submitted that the petitioner had been released on interim bail initially on 18.05.2020 on the ground of ailment of his father and subsequently he went to jail but he was not permitted to surrender on account of the Policy decision taken by the Government of India due to surge of the COVID Pandemic. The petitioner is well within the guidelines of HPC and this period spent on interim bail, is liable to be included in the period of sentence already undergone by the appellant.

3. Learned counsel appearing on behalf of the petitioner has relied upon



the Judgement of the Coordinate Bench in ***Virender vs GNCTD*** in W.P.CRL 798/202 decided on 06/07/2021.

4. The *learned ASC* opposed the relief on the ground that this Policy was not be applicable to special Acts like POCSO, MCOCA, PC Act, NDPS, PMLA, UAPA, Terror related Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, which were excluded from consideration zone for being released on "interim bail".

5. It is submitted that since the accused has been convicted under Section 376 IPC and POCSO, this benefit of the policy of HPC Committee cannot be made applicable to the petitioner.

6. Submissions heard.

7. As has been submitted on behalf of the petitioner, his initial bail was on the ground of the medical health of his father. As per his own submissions, he had not been allowed to surrender on account of Corona Pandemic. His conviction is under Section 376 IPC and POCSO Act, which are the categories specifically excluded from the categories for which the benefit could be given to the accused of the period spent by him on interim bail which was directed to be included in the sentence suffered by him.

8. A reference be made to ***Ashfaq v. State of Rajasthan*** SCC 55 in which the Supreme Court had explained that Parole is eventually treated as mere suspension of the sentence for the time being keeping the quantum of sentence intact. However, the period of sentence spent on Furlough by the petitioner need not be undergone by him as it is done in the case of Parole. Furlough is granted as a good conduct remission according to the Delhi Prison Rules'2018. It was observed that considering the emergent situation



caused due to Covid 19 Pandemic and in exercise of power conferred under Rule 12/12A of Delhi Prison Rules, the Government vide Notification dated 27.03.2020 had decided to release certain categories of prisoners on emergency Parole and that the period of emergency Parole was to be counted towards the sentence of the prisoners. This period of emergency Parole was extended from time to time and the Order granting the extension noted that the period of emergency Parole shall be counted towards the sentence of prisoners.

9. In the light of the Notifications, it was concluded in **Ashraf**(supra) that the release during this COVID Pandemic period was in the nature of remission as the sentence being undergone and not mere suspension of sentence as in the case of Parole.

10. The Rule further prescribes that the convict is not entitled to remission while undergoing the sentence of default of payment of fine. In the Judgement of the Coordinate Bench in the case of **Virender v. GNCTD** on which reliance has been placed by the petitioner, the accused who had been punished for the offences under Section 363 IPC and Section 4 POCSO Act, had sought the benefit of the period on which he had remained on interim bail during the COVID. Placing reliance on the Judgement of Apex Court in **Ashfaq (supra)**, the contention of the petitioner that it had undergone substantial sentence in default while on emergency Parole, was not accepted and the Petition was dismissed.

11. The facts involved in the said case were different as the benefit of emergency Parole was sought in respect of the default sentence on account of non payment of fine.

12. In the present case, it was specifically categorised that offences under



POCSO would not qualify to be taken as a period towards serving of the sentence. Since the Petitioner comes under the specified category, he cannot be granted benefit of the period for his interim bail.

13. There is no merit in the Writ Petition and is accordingly dismissed.

NEENA BANSAL KRISHNA, J

JULY 3, 2024/PT