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

+ **W.P.(CRL) 641/2025**

RAHUL @ MAYANK

.....Petitioner

Through: Mr. Alok Tripathi and Mr.
Amitosh Chaturvedi, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjay Lao, Standing
Counsel (Crl.) with Ms. Priyam
Aggarwal, Mr. Abhinav Kumar
Arya and Mr. Aryan Sachdeva,
Advs.
SI Upendra Pandey.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

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21.04.2025

W.P.(CRL) 641/2025 & CRL.M.A. 5948/2025 (For interim release)

1. By way of this petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioner has approached this Court seeking following reliefs:

“a) Issue appropriate Writ/ Order/direction in the nature of Habeas Corpus thereby directing the release of the Petitioner in relation to case FIR No. 299/2013 registered at P.S Shakarpur.;

b) Pass such other or further order/orders as this Hon'ble Court may deem fit in the larger interest of justice.”

2. After conclusion of the trial in relation to FIR No. 299/2013, the



Petitioner was convicted for offences under Sections 376(2)(n)/354-C/506 of the Indian Penal Code, 1863 (“**IPC**”) and was sentenced to undergo ten (10) years of rigorous imprisonment along with payment of fine for each offence, in default whereof, to further undergo simple imprisonment for one year and six months in total.

3. Learned counsel for the Petitioner states the Petitioner has filed a Criminal Appeal being CRL.A. No. 587/2019 against the order of conviction, which was dismissed *vide* Order dated 18.05.2020. He further states that the Petitioner was not released on bail and was in custody throughout.

4. It is the case of the Petitioner that he was granted emergency parole on 25.06.2020 during the Covid-19 pandemic. Thereafter, he surrendered before the jail authorities on 22.02.2021. The Petitioner was again granted emergency parole on 07.06.2021. However, he did not surrender this time on the assumption that the period spent outside jail will be adjusted towards his sentence and therefore, he has exhausted his entire period of sentence.

5. In January 2023, the Petitioner was re-arrested for offences under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**”) arising out of FIR No. 20/2023, registered at Police Station Preet Vihar. On 29.03.2023, the Petitioner was granted bail in the said FIR by the Court of Additional Sessions Judge-02, Karkardooma Courts, East, Delhi.

6. The short contention raised by the Petitioner before us is that he cannot be in custody in FIR No. 299/2013 since he has already undergone the entire sentence, which was completed in October, 2022.

7. Notice has been issued on 24.02.2025 in the Writ Petition and the application. Nominal roll has been filed. The nominal roll dated



15.04.2025 reflects that as on 21.04.2025, the Petitioner is yet to serve a period of one year one month of his sentence.

8. Learned counsel for Petitioner and the learned Standing Counsel for the State place reliance on a Circular dated 29.10.2021 (“**Circular**”) to advance their respective contentions.

9. On the one hand, the learned counsel for Petitioner states that the period for which Petitioner was released on emergency parole due to the onset of Covid-19, has to be taken into consideration as sentence undergone and if that is considered, the Petitioner has completed his sentence in October, 2022 itself.

10. *Per contra*, the learned Standing Counsel for the State states that it was incumbent on the Petitioner to surrender as and when called for and since the Petitioner did not surrender, he is not entitled to the said benefit.

11. The entire Circular dated 29.10.2021 reads as under:

“GOVT. OF NCT OF DELHI
OFFICE OF THE DIRECTOR GENERAL OF PRISONS,
PRISON HEADQUARTERS, TIHAR JANAKPURI.
e-mail: dbthihar@gov.in 8520695, 28520895

CIRCULAR

Sub-Regarding custody period of emergency parole.

Provision of "Emergency parole" was Introduced by adding Rule 1212A in DPR 2018 vide Delhi Govt. notification dated 23.09.2020 to grant emergency parole to the convicts in the event of emergency situations life threat of pandemic, natural disaster or any other situation or circumstances which warrant immediate easing of population of the inmates in the Prison. In the wake of pandemic of Covid-19, convicted prisoners were released on emergency parole for Q8 weeks which was extended from time to time by the Govt., In the year 2020 during the first wave and then again in 2021, during the second wave. The period spent outside jail on emergency parole shall be counted towards the sentence of the prisoners vide orders issued by the Home Department, Govt. of



NCT of Delhi subject to compliance of terms & conditions of release. Convicts who did not surrender after availing emergency parole on the due date their conduct in violation of terms and conditions of release on emergency parole. While in some the period of overstay may be small and there may be some genuine reason behind late surrender.

In such cases, the Superintendent should consider the case on merit and condone the misconduct by Issuance of warning. However, in other cases, the act of not surrendering on time may be willful or without any reasonable explanation. Such convicts need to be treated as emergency parole jumpers. Some of them have been rearrested by, Delhi Police in another case or same case.

The convicts who violates the terms and conditions of emergency parole and re-arrested by the police in another case of same case, in this case the period spent by the convict outside jail on emergency parole shall not be counted towards the sentence if there are sufficient evidence that the non-surrender is intentional and mala-fide with Intention to evade the remaining period of sentence.

This is issued with the approval of the competent authority

Superintendent-I: PHQ
Prisons Headquarter, Tihar
New Delhi

Dated: 29.10.2021”

12. A perusal of the Circular shows that in cases where the convicts do not surrender on time, their files are kept before the Board for orders on such files. It seems that, in the Petitioner’s case, this exercise has not been undertaken by the Jail Authorities.

13. In view of the above, the concerned Jail Authorities are directed to consider the case of the Petitioner within a period of two weeks from today. The Petitioner is directed to give a representation within a week to the concerned Jail Authorities regarding his interpretation of the Circular that the benefit has to be given to the Petitioner.

14. Without making any observation on the merits of the case, the Writ Petition along with pending application(s), if any, shall stand



disposed of in view of the above said terms.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

APRIL 21, 2025/akc