

(2023) 08 DEL CK 0071

In the Delhi High Court

Case No : Criminal Writ Petition No. 1001 Of 2023

Mohd. Sumer

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Prison Rules, 2018 — Rule 1210(ii), 1271
Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 302, 307, 324
Arms Act, 1959 — Section 27, 54, 59

Citation : (2023) 08 DEL CK 0071

Hon'ble Judges : Swarana Kanta Sharma, J

Bench : Single Bench

Advocate : Sharad Malhotra, Amit Peswani, Nandita Rao

Final Decision : Disposed Of

Judgement

Swarana Kanta Sharma, J

1. The present writ 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 by the petitioner seeking issuance of writ in the nature of certiorari for quashing of order dated 25.01.2023 passed by respondent rejecting the application of the petitioner seeking parole, and also for issuance of writ in the nature of mandamus directing the respondent to release the petitioner on parole for a period of 04 weeks for engaging a counsel of his own choice for filing Special Leave Petition ('SLP') before the Hon'ble Supreme Court of India.

2. In the present case, the petitioner was arrested in FIR bearing No. 229/2013 registered at Police Station Sadar bazar, Delhi and vide judgment dated 26.08.2019, he was convicted under Sections 302/ 324 of Indian Penal Code, 1860 (?IPC Rs.) by the learned Additional Sessions Judge, Tis Hazari Court, Delhi. By way of order on sentence dated 27.09.2019, the petitioner was

sentenced to undergo rigorous imprisonment for life along with fine of Rs.10,000/- under Sections 302 and to undergo rigorous imprisonment for three years and fine of Rs.5,000/- under Section 324 IPC. The petitioner had then preferred Criminal Appeal No. 1264/2019 before this Court against the judgment and order on sentence passed by the Trial Court. However, the said appeal was dismissed by this Court vide judgment dated 19.09.2022 whereby the conviction and order on sentence as recorded by the learned Trial Court was upheld.

3. Thereafter, the petitioner had approached the respondent for grant of parole for filing SLP against the judgment dated 19.09.2022 passed by this Court. However, the respondent vide order dated 25.01.2023 rejected the application for grant of parole filed by the petitioner. The petitioner being aggrieved by the same, has filed the present petition for the issuance of appropriate writ.

4. Learned counsel for the petitioner states that the petitioner is presently confined in Central Jail No. 3, Tihar Jail, New Delhi in relation to the present case and since his date of arrest i.e., 10.11.2013, he has continuously remained in judicial custody i.e. for a period of 09 years and 08 months, except for being released once on interim bail for a period of 05 days in the year 2019. It is argued that the petitioner wishes to avail an opportunity to engage a counsel of his choice for the purposes of filing SLP before the Hon'ble Apex Court, for which parole be granted to the petitioner for a period of 04 weeks. Reliance in this regard is placed upon several decisions of this Bench as well as Co-ordinate Bench of this Court whereby parole has been granted on ground of filing SLP.

5. Per contra, learned ASC for the State argues that there is no infirmity in the order passed by the jail authority dismissing the parole application filed by the petitioner. It is argued that the conduct of the petitioner during last one year as well as the overall conduct has remained unsatisfactory. It is further stated that the petitioner is engaged in a rivalry with some other gang, members of which have threatened to take revenge from him and thus, releasing the petitioner on parole can result in breach of peace and tranquility of the concerned area.

6. The arguments addressed on behalf of both sides have been heard and material on record has been perused.

7. In the present case, the petitioner has been in judicial custody since 10.11.2013 i.e. for a period of 09 years and 08 months. As per nominal roll, the only time period for which he was released from the jail was from 05.11.2019 to 10.11.2019 pursuant to grant of interim bail by this Court. This Court has also perused the order dated 25.01.2023, impugned before this Court, by the competent authority, which reads as under:

"I. The convict is not entitled for parole in view of Rule 1210 sub rule (II) of Delhi Prison Rules-2018, which states that:-

Rule 1210 sub rule (II):- "The conduct of the Prisoner who has been awarded major punishment for any prison offence, should have been uniformly good for

last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application". In this case, several punishments awarded to the above said convict. In view of punishments dated 05.12.2021 27.04.2022 & 22.11.2022 and Rule 1271 of Delhi Prison Rules 2018, the above said convict is not entitled for grant of parole.

2. Further, as per nominal roll, the last one year and overall jail conduct of the above said convict is reported to be unsatisfactory in view of several punishments. Two other cases are also pending against the above said convict. Superintendent Jail has also not recommended grant of parole to the above said convict.."

8. A bare perusal of the aforesaid order reveals that the respondent has rejected the parole application filed by the petitioner mainly on three grounds i.e. (i) due to three punishments awarded to the petitioner in last one year, (ii) the overall conduct in the jail being unsatisfactory due to several punishments, and (iii) pendency of two other criminal cases against the petitioner.

9. The nominal roll dated 19.05.2023 has also been perused and examined by this Court, as per which the jail conduct of the petitioner for the last one year has been mentioned as "unsatisfactory due to punishments dated:- 05.12.2021 - for misbehaving with duty staff, 27.04.2022 - for recovery of tobacco, 22.11.2022 - for misbehaving with on duty staff". Further, the overall jail conduct of the petitioner is reported to be unsatisfactory due to 17 punishments awarded to the petitioner during the period of his judicial custody of about 09 years and 08 months.

10. By way of status report filed by the State, this Court has also been informed that on 18.08.2022, the petitioner had called her mother and had informed that he had got into a fight with one Danish @ Tiggi and his associates in Tihar Jail due to which the said persons might plan an attack on his house to take revenge from him. Thereafter, on 19.08.2022, two boys had attacked the house of the petitioner and total eight rounds were fired which had caused injuries on the legs of the sisters of petitioner, after which an FIR bearing No. 705/2022 under Section 307 of IPC and Sections 27/54/59 of Arms Act was registered. In this regard, learned ASC for the State had argued that in such circumstances, the petitioner must not be released on parole.

11. There is no dispute about the fact that parole can be granted to a convict who seeks to avail his right to file SLP before the Hon Rs. ble Apex Court and pursue his legal remedy before the last court of justice in the country. In this regard, learned counsel for the petitioner has also placed reliance upon several decisions of this Court whereby parole had been granted on such grounds. However, this Court is of the opinion that the present case is clearly distinguishable on facts and circumstances. This Court finds merit in the

argument of learned ASC for the State that granting parole to the petitioner can in fact endanger the life of petitioner himself, his other family members as well as the persons residing in the neighbourhood.

12. However, in these circumstances, it is ordered that a private counsel of his choice will be permitted to meet the petitioner either through jail meeting/ mulakat or through video conferencing for the purpose of filing Special Leave Petition. The concerned Jail Superintendent is also directed to ensure that the petitioner has access to the Jail Visiting Advocates and the In-charge, DHCLSC is also directed to ensure that the present petitioner is provided with legal aid assistance for the purpose of filing SLP before the Hon Rs. ble Apex Court against his conviction.

13. Accordingly, the present petition stands disposed of in above terms.

14. A copy of this judgment be forwarded to the concerned Jail Superintendent for necessary information.

15. The judgment be uploaded on the website forthwith.