

(2022) 05 DEL CK 0027

In the Delhi High Court

Case No : Criminal Writ Petition No. 480 Of 2022

Rakesh @Diwan

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(1), 226
Delhi Prison Rules, 2018 — Rule 1200, 1211, 1211(vii)
Code Of Criminal Procedure, 1973 — Section 303, 482
Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2022) 05 DEL CK 0027

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Faraz Maqbool, Vismita Diwan, Chandan Kumar, Kamna Vohra

Final Decision : Disposed Of

Judgement

Asha Menon, J

1. This petition has been filed under Section 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of writ in the nature of mandamus directing the respondent to release the petitioner on parole for a period of eight weeks on the grounds of filing Special Leave Petition (for short, 'SLP').

2. Mr. Faraz Maqbool, learned counsel for petitioner, submitted that the petitioner has been convicted for the offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act") vide judgment dated 19th December, 2019 and has been sentenced to undergo rigorous imprisonment for a period of 14 years vide order on the sentence dated 18th January, 2020 in case FIR No.513/2013, registered at P.S. Okhla, Delhi. This conviction was challenged before this court vide CRL.A. No.454/2020. However, the same was dismissed vide judgment dated 10th August, 2021 and this Court upheld both, the conviction as well as the sentence.

3. Learned counsel for petitioner submitted that the petitioner is presently confined in Central Jail No. 5, Tihar and has already undergone incarceration of about 8 years out of rigorous imprisonment for 14 years and fine. He desires to file an SLP for which he sought parole. He also sought parole on the ground of maintaining social-ties with the family. However, this application for parole filed before the Home Department, Govt. of NCT of Delhi on 19th August, 2021 was dismissed by the respondent on 18th January, 2022, observing that there were no special circumstances that existed for grant of parole as the convict could file the SLP from the jail itself where free legal aid was available to all prisoners. This order of dismissal has been placed on the record as Annexure A.

4. Learned counsel for petitioner has placed reliance on several decisions i.e., Chhedi Paswan v. State (NCT of Delhi), 2021 SCC OnLine Del 2230, Ravi v. State of Rajasthan, 2019 SCC OnLine Raj 5911 & Mangal v. State of Rajasthan, 2019 SCC OnLine Raj 5912 [on the point of grant of parole to POCSO convicts]; Surender Kumar v. State, 2016 SCC OnLine Del 3260, Gurmeet Singh v. State, 2016 SCC OnLine Del 3704, Sanjay Arora v. State of NCT of Delhi, 2013 SCC OnLine Del 3196 & Tika Ram v. State, 2009 SCC OnLine Del 356 [on the point of grant of Parole in cases involving sentence of life imprisonment]; Somesh Gupta v. State of the NCT of Delhi, 2010 SCC OnLine Del 76, Sharda Jain v. State, 2010 SCC OnLine Del 633, Ramesh Kumar v. State, 2009 SCC OnLine Del 3757 and Vimal Kumar Bahl v. State (NCT of Delhi), (2010) 93 AIC 597 (Del) [on the point of grant of Parole for filing SLP]; and, Order dated 2nd November, 2020 titled Pilluwa@Pappu vs. State [WP (Crl.) 1780/2020] & Samuel Onyema Anyanwu v. State (GNCT of Delhi), 2021 SCC OnLine Del 302 [regarding "Special Circumstances" as per Delhi Prison Rules 2018], to submit that parole has been granted to POCSO convicts or those undergoing life imprisonment, also for the purposes of filing SLP.

5. Ms. Kamna Vohra, learned Additional Standing Counsel for the State, on the other hand, submitted that the reason for dismissal was very clear and the Parole Rules have been followed. The denial of parole is not whimsical and could not be faulted. The Status Report has verified the petitioner's address.

6. The Nominal Roll has been also received from the jail, which records that the petitioner has been allotted work as 'Lungar Sahayak' and has not been found violating any prison rule and his conduct for the last one year has been satisfactory. It is also to be noted that the Nominal Roll discloses that the petitioner has never been released on bail, parole or furlough.

7. The order rejecting the parole application of the petitioner gives the following grounds for rejection: -

"1. As per Rule 1211 (VII) of Delhi Prison Rules- 2018, which states that: -

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;

(VII) If prisoner is convicted under POCSO. In this case, as per crime detail, said convict committed offence punishable under POCSO Act.

2. Further, no special circumstances exist for grant of parole as the convict may file SLP from jail itself where free legal aid facility is available to all prisoners.”

8. As regards the observation that filing of SLP constitutes no “special circumstance” as there is free legal aid available, suffice it to note that the courts have not agreed with this stance of the Government. Under Article 22(1) of the Constitution as well as Section 303 Cr.P.C., an accused person has been guaranteed with a Constitutional right to engage a counsel/pleader of his own choice. It is no doubt true that the Legal Services Authorities at all levels endeavour to provide excellent legal assistance to those in prison. But, to deny the convict an opportunity to engage with other counsel to enable him to make up his mind freely, as to whom he would wish to engage, would violate his constitutional rights to legal representation. In fact, it is because of the recognition of this right that the State Prison Rules, 2018 dealing with parole and furlough, recognizes that regular parole under Rule 1208 can be granted to a convict, to pursue filing of a Special Leave Petition before the Supreme Court.

9. While this ground in the impugned order does not hold water, the more serious objection is encapsulated in ground (1), namely, that the Rules itself do not permit a prisoner convicted under POCSO Act for parole. It would be useful to reproduce Rule 1211 for ready reference, as below: -

“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. to VI. xxx xxx

VII. If the prisoner is convicted under POCSO;”

10. But this bar is not absolute, for, the competent authority has been vested with “discretion” even in such cases, to grant parole, provided there were special circumstances. It is clear that the impugned order does not refer to the “special circumstances” that were required to be considered and were found insufficient to grant parole. Rather, it is clear that the “special circumstances” or rather their absence, have been referred to only in respect of the filing of an SLP, but not for the entitlement of the applicant for parole under Rule 1211(VII) of the State Prison Rules.

11. To reiterate, a convict under the POCSO Act is not barred from seeking parole, as discretion has been vested in the Competent Authority to grant parole to such a convict under “special circumstances”. What those “special circumstances” would be have not been spelt out. Nevertheless, it is clear that the facts of each case would reveal the “special circumstances” for grant of parole. The Competent Authority should keep in mind the purpose of parole as listed out in Rule 1200 of the Prison Rules. These are reproduced below for ready

reference:-

"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."

12. As has been held in W.P.(CrI.) No.1479/2009, the grounds for declining parole are the following: -

- "(i) A reasonable apprehension, based upon material available with the Government such as the circumstances in which the offence is alleged to have been committed by him and the other cases if any in which he is involved, that the petitioner, if released on bail may not return back to jail to undergo the remaining portion of the sentence awarded to him;
- (ii) A serious apprehension of breach of law and order or commission of another offence by the petitioner if he comes out on parole;
- (iii) Past conduct of the petitioner such as jumping the bail or parole granted earlier to him;
- (iv) A reasonable possibility of the petitioner trying to intimidate or harm those who have deposed against him or their relatives."

13. Balancing the two would be an expected exercise of the respondent Department, while recommending parole or rejecting the application.

14. In the present case, the petitioner is one who has remained interned in prison for 8 years and more. He has never availed of bail, furlough or parole so far as revealed by the Nominal Roll. This continuous incarceration would be a significant factor for grant of parole. The long incarceration would have disrupted his family life and would have definitely impacted him physically and psychologically. In fact, all the objectives listed in Rule 1200 are applicable to him.

15. Moreover, he has, in all these times, maintained good conduct and discipline in the prison. There is no reasonable apprehension that the petitioner, if released on parole, may not return back to jail to undergo the remaining portion of the

sentence awarded to him, or that he may escape the law, or that he may once again indulge in the same activity. Since the appeal has been already disposed of, there is no possibility of his intimidating or harming those who have deposed against him. In fact, the Status Report does not reveal any such possibility.

16. In the circumstances, the petition is allowed. The concerned Jail Superintendent is directed to release the petitioner on parole for a period of eight weeks on his furnishing a personal bond and surety in the sum of Rs.10,000/- each, to the satisfaction of Jail Superintendent and subject to further following conditions:

(i) The petitioner shall not leave NCR Region without informing the local SHO;

(ii) The petitioner shall furnish his mobile phone/landline number and residential address as well as that of his surety to the Jail Superintendent/SHO and both shall keep their mobile/landline phones operational at all times during the parole period and in the event of any change of the same, will immediately inform the same to the Jail Superintendent/SHO; and,

(iii) The petitioner shall drop a pin location on Google Maps so that his location is available to the Jail Superintendent/SHO.

17. The petition is accordingly disposed of.

18. The judgment be uploaded on the website forthwith.