

(2009) 11 DEL CK 0086

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 603 of 2009

Ramesh Kumar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 12

Constitution of India, 1950 — Article 136, 142, 226, 32

Citation : (2009) 11 DEL CK 0086

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rakhi Dubey, for the Appellant; Roshan Kumar, APP, for the Respondent

Judgement

V.K. Jain, J.—This is a petition under Article 226 of the Constitution r/w Section 482 of the Code of Criminal Procedure for quashing the order dated 27th March, 2009 whereby the application of the petitioner for grant of parole was rejected. 2. It has been stated in the petition that the appeal of the petitioner against his conviction having been dismissed by this Court on 2nd February, 2009, he intends to prefer a SLP before the Hon'ble Supreme Court and wants to engage a competent lawyer after arranging finances for this purpose. The petitioner applied for grant of parole vide dispatch No. 1360 dated 14th February, 2009. The request having been rejected, he has filed the present writ petition challenging the order of rejection of parole.

3. A perusal of the impugned order shows that parole has been rejected in view of adverse police report and considering the fact that SLP can be filed by the convict from the jail itself.

4. In Sunil Fulchand Shah Vs. Union of India and Others, , which was a case of detention in CFEPOSA Act, a Constitutional Bench of the Hon'ble Supreme Court held that for securing release on parole detenu has to approach the court

concerned or jail authorities, who may impose conditions and the grant of parole shall be subject to those terms and conditions. It was further held that the bar of judicial intervention to direct temporary release of a detenu would not affect the jurisdiction of High Court under Article 226 of Constitution or of Supreme Court under Article 32 or 136 or 142 of the Constitution to direct the temporary release of the detenu, whose request to be released on parole had been, in the opinion of the court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. That jurisdiction, however, has to be sparingly exercised by the court and even then it is appropriate that the court leaves it on administrative or jail authorities to direct the conditions and terms on which the parole is to be availed by the detenu.

5. In *Poonam Lata Vs. M.L. Wadhawan and Others*, , the Hon''ble Supreme Court inter alia observed as under:

it is the appropriate government and not the court which deals with a case of temporary release of the detenu.

in a given case the court may be required to consider the propriety of an adverse order by the government in exercise of the jurisdiction u/s 12 of the Act. On the principle that exercise of administrative jurisdiction is open to judicial review by the superior court, the High Court under Article 226 or this Court under Article 32 may be called upon in a suitable case to examine the legality and propriety of the governmental action. There is no scope for entertaining an application for parole by the court straightway. The legislative scheme, keeping the purpose of the statute and the manner of its fulfillment provided thereunder, would not justify entertaining of an application for release of a detenue on parole.

6. Grant of parole being an executive function, it is for the Government and not for the Court to consider the request made by a convict for grant of parole and pass appropriate orders on it. If, however, the order passed by the Government is found to be based on extraneous reasons or is on grounds which are not relevant, or is otherwise unjust or improper, it is open to the court, in appropriate cases to quash such an order and direct release on parole.

7. The learned Counsel for the respondent states that the adverse police report referred in the order whereby parole was rejected is that (1) the petitioner does not own any property in Delhi and (2) he may escape, if released on parole.

8. It is not necessary for grant of parole that the convict should own a property in Delhi or elsewhere. If that is applied as a criterion for granting or rejecting parole, a poor man will never be able to get parole even if he otherwise deserves it on the facts of the case. Therefore, an extraneous consideration has been applied by the respondent in rejecting the request for parole. A perusal of the status report filed by the respondent shows that the wife of the petitioner, Smt. Sarita is residing in Delhi at E-3/697, 4th Pushta, Sonia Vihar and is working in a factory as a labourer. Thus, the immediate family of the petitioner is based in Delhi.

9. A perusal of the judgment whereby the appeal filed by the petitioner was dismissed shows that he is alleged to have committed murder of his brother-in-law. The appeal of the petitioner having been dismissed, SLP before the Hon''ble Supreme Court is his last resort. He would, therefore, naturally be anxious to ensure that he engages a competent lawyer and briefs him properly so that his case is adequately presented before the Hon''ble Supreme Court. Therefore, seeking of parole for the purpose of engaging a Lawyer and filing SLP before the Hon''ble Supreme Court is eminently justified. No doubt, the possibility of the convict jumping the parole and not returning to the prison, to serve the remaining sentence is a valid consideration, while considering his request for grant of parole. In a given case, if there is a reasonable apprehension of the convict jumping the parole, the Govt. would be justified in rejecting his request. In the present case, since the family of the petitioner is based in Delhi, there is not much likelihood of his jumping the parole. In any case, suitable conditions can always be imposed to ensure that the petitioner does not misuse the liberty of parole if granted to him.

10. Keeping in view all the facts and circumstances of the case, the impugned order passed by the respondent is quashed and the petitioner is directed to be released on parole for a period of one month from the date of his release, after one week from today, on his furnishing a personal bond in the sum of Rs. 10,000/- with one surety of the like amount to the satisfaction of the trial court subject to the conditions that (1) he shall not leave Delhi on any ground; (2) In Delhi, he shall live only in House No. E-3/697, 4th Pushta, Sonia Vihar, which is presently occupied by his wife; (3) he shall mark his presence in Police Station Khajuri Khas at 9.00 A.M. on every Monday and Thursday; and (iv) he shall comply with such other conditions as the respondent may impose within one week to ensure that he does not jump the parole. Dasti to both the parties. The petition stands disposed of.