
(2010) 02 DEL CK 0349

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1840 of 2009

Smt. Sharda Jain

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Citation : (2010) 167 DLT 655 : (2010) 7 RCR(Criminal) 675

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

Bench : Single Bench

Advocate : Anita Abraham, for the Appellant; Ranjit Kapoor, A.S.C. and Asim, for the Respondent

Judgement

V.K. Jain, J.—This is a petition under Article 226 of the Constitution of India, challenging the order dated 23rd November, 2009 whereby request of the petitioner for grant of Parole was rejected only on the ground that she had availed seven days interim bail in that year.

2. The petitioner was convicted in the case registered vide FIR No. 313/02 u/s 364/302/201/120B IPC and read with Section 25/27 A. Act at PS Keshav Puram. The appeal filed by the petitioner, being CrI. A. No. 51/2007 was dismissed by Division Bench of this Court vide Judgment dated 27th August, 2009. The petitioner intends to prefer SLP before the Hon''ble Supreme Court against the Judgment of the Division Bench, whereby her appeal has been dismissed.

3. The grant of Parole being essentially an executive function, it is for the Government to consider the request made by the convict for the purpose and to pass an appropriate order on it. If however, the order passed by the Government, declining parole is based upon irrelevant ground or extraneous considerations or is otherwise wholly unsustainable being an order which no reasonable person could, in the facts and circumstances of the case have passed or is totally perverse or arbitrary, it is open to the Court, in exercise of its powers under Article 226 of the Constitution to set aside such an order and direct release

of convict on parole.

4. The appeal filed by the petitioner having being dismissed by Double Bench of this Court, SLP before the Hon''ble Supreme Court is the only legal remedy available to her and is the last resort which she can have in order to prove the innocence which she claims. Therefore, anxiety of the petitioner to engage the best lawyer she can and to brief her fully and adequately in order to enable him to present her case effectively and to her complete satisfaction before the Hon''ble Supreme Court needs to be appreciated and recognized by the Government.

5. While deciding WP (Crl.) No. 1749/2009 wherein parole was sought to the SLP before the Hon''ble Supreme Court, against an order dismissing the appeal filed by the petitioner, inter alia observed as under:

6. The request for grant of parole, to file SLP before the Hon''ble Supreme Court against conviction and sentence for a serious offence certainly stands on a stronger footing than the desire to maintain links with the society and to reunite with the family. Hence, ordinarily such requests ought to be allowed unless there are reasonable grounds which warrant taking a different view in a particular case. Such grounds may include:

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.

It is neither possible nor desirable to exhaustively lay down all such grounds as would justify denial of parole in a particular case. Each case has to be examined by the Government dispassionately and with an open mind, taking into consideration all relevant facts and circumstances.

6. The only ground on which parole has been declined to the petitioner is that she had availed interim bail in the year 2009. Grant of interim bail during the pendency of an appeal can never be a valid ground for rejecting parole for the purpose of filing the SLP before the Hon''ble Supreme Court, the consideration for grant of parole being altogether different from those for grant of interim bail, which is granted, for a limited period, and for a specific purpose. Hence, the impugned order passed by Government cannot be sustained and is liable to be

quashed accordingly.

7. The impugned order dated 23/11/2009 whereby parole was declined to the petitioner is hereby set aside and the petitioner is directed to be released on parole for a period of one month after one week from today, subject to the following conditions:

- i. She shall furnish a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the trial court.
- ii. She shall not go out of Delhi during the period he remains on parole.
- iii. She shall supply a copy of the SLP filed by her to the concerned SHO within four weeks from the date of his release.
- iv. She shall mark her presence in Police Station Keshav Puram at 10:00 A.M. on every Sunday.
- v. She shall not indulge into any unlawful activities, while on parole.
- vi. She shall comply with such other conditions as the Government may decide to impose within one week from today, in order to ensure that he does not escape, while on parole.

W.P. (CrI) No. 1840/2009 stands disposed of.

Dasti.