

\$~30

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

+ W.P.(CRL) 2027/2022

KUNDAN SINGH

..... Petitioner

Through: Mr. Faraz Maqbool (DHCLSC) with
Ms. Vismita Diwan, Ms. Chinmayi
Chatterjee and Mr. Chandan Kumar,
Advocates

versus

THE STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Mr. Saransh, Advocate for Ms.
Nandita Rao, ASC for GNCTD with
SI Jitendra, P.S. Mehrauli

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

01.11.2022

%

1. The instant petition has been filed for issuance of a writ of certiorari for quashing the order dated 27.07.2022 by the GNCTD rejecting the application of the petitioner and to issue a Writ of Mandamus or any other Writ, directing the respondent to release the petitioner on parole for a period of two (02) months to settle partition of undivided property of joint Hindu Family, to maintain social ties and family relations and to curb inner stress. The petitioner, who is a convict serving life imprisonment in case FIR No. 592/2007 registered under Section 302/201/404 IPC, Police Station Mehrauli, Delhi has sought parole on the ground that has to complete the partition of undivided ancestral property of Joint Hindu Family due to the

death of mother of the petitioner and to arrange funds for his family needs as there is no one in the family to arrange the said funds since wife of the petitioner is a housewife and unable to arrange for the same.

2. It is also stated that the petitioner has applied for grant of parole for a period of 02 months with the office of Deputy Secretary, Home, Government of Delhi which was dismissed vide letter No. F.18/12/2016/HG/2096 dated 27.07.2022 on the ground that he was not entitled to parole in view of Rule 1210 Sub Rule (II) and (V) of Delhi Prisoners Rules 2018, which stated that:-

1. *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 the application and the conduct of the 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 the application". In this case as per nominal roll said convict has been awarded punishment dated 31.12.2012, 03.01.2022 & 05.01.2022, which are major punishments in view of Rule 1271 of Delhi Prison Rules, 2018.*

2. *Rule 1201 Sub Rule (V)- "A minimum of six months ought to have elapsed from the date of surrender on the conclusion of the previous parole availed. In emergency, parole may be considered even if minimum period of six months has not been elapsed from the termination of the previous parole. The emergency may include delivery of child by the wife of the convict, death of a family member, marriage of children, terminal illness of family members and natural calamities". in this case, the convict has last availed 30 days parole w.ef. 24.11.2021 to 25.12.2021 granted by the Hon 'ble High Court of Delhi
Further, as per nominal roll, overall jail conduct and last one year jail conduct of the said convict is reported to be unsatisfactory. The Superintendent, Central Jail No. 8/9 has not*

recommended grant of parole to the above said convict in view of his conduct in jail during last one year.

3. Further, as per report received from the office of D. G. (Prisons), grant of parole IO the above said convicted is not recommended.

3. It is argued that the grounds on which parole has been denied are erroneous.

4. Learned counsel for the petitioner has argued that the reasons mentioned by the respondent for rejecting the application for the petitioner was that he had not completed two years since his last punishment was awarded on 05.01.2022. It is argued that this matter is pending inquiry before learned District & Sessions Judge concerned, and he has already been punished for the same by the jail authorities. It is also pointed out that the petitioner has been granted parole 07 times in the past including emergency parole which was granted on 23.04.2022 to 02.05.2022 on account of his mother's *barisi*.

5. Learned APP for the State on the other hand states that as per the Rules, parole could not have been granted to the petitioner and was declined by the concerned authority since his jail conduct was unsatisfactory and multiple punishments were awarded to him for breach of Prison Rules. In this regard, a reference was made to the nominal roll dated 21.08.2022. It is pointed out that it is clear from the nominal roll that the petitioner has been awarded punishments for prison offences on 17 occasions between 2013 and January, 2022.

6. Status report dated 01.11.2022 has been handed over to the Court today which shall also be filed through the Registry by the State. Status

report verifies the contents and grounds of parole mentioned in the present petition.

7. After hearing learned counsel for the petitioner as well as learned APP for the State, this Court is of the view that in the last two (02) years, the petitioner has not been involved in any offence involving violence, last two punishments in any case are still a matter of inquiry before the learned District & Sessions Judge, therefore, it is yet not clear whether they will be found to be liable for major punishment or not. It is also clear from the nominal roll that the petitioner was awarded punishment as was deemed appropriate by the jail authorities for the breach of Prison Rules which are clearly mentioned in the nominal roll. It is not disputed that the petitioner was granted parole on 07 occasions including one emergency parole and he had not misused the liberty of parole granted to him. The petitioner has been in custody for more than 14 years. It is also not disputed that it will be 06 months since he was granted emergency parole on 02.11.2022. While considering grant of parole, the court also has to remain conscious of the fact that the petitioner has been awarded life imprisonment and circumstances have arisen in the last 14 years which he needs to attend to family exigencies. Sensitivity and compassion balanced with rules, regulations and law needs to be maintained by any Court as one is dealing with humans and not mere files and orders. Considering that the petitioner has spent 14 long years in jail, has been granted parole on 07 occasions, has lost his mother while he was in judicial custody and now after death of his mother such exigencies have arisen which he needs to attend to, this Court is inclined to grant him parole for a period of 45 days from the date of his release on the following conditions:-

- (i) The petitioner shall furnish a personal bond in the sum of Rs.25,000/- to the satisfaction of the Jail Superintendent. Considering that the petitioner does not have a base nor any relatives in Delhi, the requirement of furnishing a surety is dispensed with at this stage.
- (ii) The petitioner shall not leave District Nainital, Uttarakhand except to travel to and from Central Jail, Mandoli, Delhi, without permission of the court and shall ordinarily reside at the address mentioned in this application;
- (iii) The petitioner will report on every Wednesday to the SHO PS : Kathgodam, District Nainital, Uttarakhand between 11 am and 11:30 am for marking his appearance. However the petitioner will not be kept waiting for longer than one hour at the police station during such visits;
- (iv) The petitioner shall furnish to the SHO a cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- (v) If the petitioner has a passport, he shall also surrender the same to the Jail Superintendent
- (vi) The petitioner shall not contact nor visit nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses in the other pending matter viz. FIR No. 725/2016. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the

proceedings in the pending matter;

(vii) Upon expiry of the period of interim bail, the petitioner shall surrender before the concerned Jail Superintendent.

8. In above terms, the present writ petition stands disposed of.
9. A copy of this order be sent to the Jail Superintendent.

SWARANA KANTA SHARMA, J

NOVEMBER 1, 2022/ns