

HIGH COURT OF DELHI**Bench: Justice Swarana Kanta Sharma****Date of Decision: 30th May 2024**

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL) NO. 1896 OF 2023

AMIT GULIA @ ANDAL ...PETITIONER**VERSUS****STATE OF NCT OF DELHI ...RESPONDENT****Legislation:**

Article 226 of the Constitution of India

Section 482 of the Code of Criminal Procedure, 1973

Sections 302, 326, 452, 147, 148, 149 of the Indian Penal Code, 1860

Delhi Prison Rules, 2018 (Rule 1210, Rule 1208, Rule 1212)

Subject: Writ petition seeking quashing of the rejection order of parole application and seeking parole to engage a counsel for filing a Special Leave Petition (SLP) before the Supreme Court.**Headnotes:**

Criminal Law - Parole - Grant of Parole for Filing SLP - Petition filed under Article 226 of the Constitution read with Section 482 Cr.P.C. for quashing rejection order of parole application - Petitioner convicted under Sections 302, 326, 452, 147, 148, 149 IPC and sentenced to life imprisonment - Parole sought to engage counsel for filing SLP before Supreme Court -

Rejection of parole by competent authority citing Rule 1210 of Delhi Prison Rules, 2018 due to unsatisfactory conduct - Court observed conduct satisfactory in last one year and no punishment post-2022 - Right to file SLP deemed crucial - Rule 1208 lists SLP filing as valid ground for parole - Simultaneous parole of co-convict addressed - Conditional grant of parole for four weeks after co-convict's surrender. [Paras 1-11]

Right to Legal Representation - Filing of SLP - Analysis - Court underscores importance of convicts' right to file SLP - Availability of free legal aid in jail not sufficient reason to deny parole - Opportunity to pursue legal remedies through chosen counsel emphasized. [Para 8]

Decision - Conditional Parole Granted - Parole granted for four weeks post-surrender of co-convict - Conditions include personal bond, weekly reporting to SHO, active mobile contact, and surrender post-parole with proof of SLP filing. [Para 10-11]

Referred Cases:

- State of Haryana v. Krishan (2017) 8 SCC 204
- Phula Singh v. State of Himachal Pradesh AIR 2014 SC 1256
- Indrakunwar v. State of Chhattisgarh 2023 SCCOnline 1364

Representing Advocates:

Ms. Gunjan Sinha Jain and Mr. Animesh Tripathi for Petitioner

Mr. Sanjay Lao, Standing Counsel for State and SI Shajid Hussain, P.S. Malviya Nagar for Respondent

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JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 („*Cr.P.C*’) has been filed by the petitioner seeking writ in the nature of certiorari for quashing of the rejection order dated 15.06.2023 bearing No. F.18/24/2023/HG/1695 passed by the respondent/competent authority whereby the application for grant of parole had been rejected and, for issuance of writ in the nature of mandamus, directing the respondent to release the petitioner on parole for a period of eight (08) weeks for engaging a counsel for filing Special leave to appeal before the Hon“ble Supreme Court.
2. Learned counsel appearing on behalf of the petitioner states that the petitioner is presently confined in Central Jail No. 14, Mandoli, Delhi. It is stated that the petitioner was convicted in the present case arising out of FIR bearing No. 323/2009, registered at Police Station Malviya Nagar, for offences punishable under Sections 302/326/452/147/148/149 of the Indian Penal Code, 1860 (*IPC*). It is stated that the present petitioner was convicted by Additional Sessions Judge, Saket Courts, Delhi *vide* its judgment dated 13.02.2019, and was sentenced to rigorous imprisonment for life. It is further stated that the petitioner herein had preferred an appeal being CRL.A. 653/2019, against the judgment convicting the petitioner herein, which was dismissed by this Court *vide* its judgment dated 27.03.2023, thereby upholding the conviction. It is also stated that the petitioner had filed an application seeking parole from respondent dated 09.05.2023, for filing of SLP before the Hon“ble Supreme Court of India, which had been rejected by the competent authority *vide* order dated 15.06.2023. Hence, the petitioner has approached this Court seeking release on parole for engaging a counsel for filing his SLP. It is further submitted that the petitioner herein has already undergone almost 10 years sentence without remission, therefore he be granted parole to file SLP and to establish social ties.

3. *Per Contra*, Learned Standing Counsel appearing on behalf of the State argues to the contrary and states that impugned rejection order has been passed in accordance with law by the respondent/competent authority. It is further submitted that the petitioner has been granted major punishments in the year 2022, thus the present petition for parole be dismissed.
4. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.
5. This Court has also gone through the order dated 15.06.2023 passed by the competent authority whereby the parole sought by the petitioner herein has been rejected. The same is reproduced as under:

“Sir,

With reference to your office letter F.14/SCJ-14/AS(CT)/2023/1778 dated 09.05.2023, on the subject cited above, I am to inform you that the request in respect of the above said convict for grant of parole has been considered and rejected by the Hon'ble Lt. Governor of Delhi in view of the followings: -

1 The convict is not entitled for parole in view of Rule 1210 sub rule (I) of DelhiPrison 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, punishments dated 31.12.2021, 03.01.2022, 05.01.2022 & 06.01.2022 awarded to the above said convict are the major punishments as per Rule 1271 of Delhi Prison Rules.

2 Further, as per Nominal Roll, overall jail conduct of the above said convict is reported to be unsatisfactory. The Superintendent, Central Jail No-14, Mandoli has also not recommended grant of parole to the above said convict.

The-convict may be informed accordingly”.

6. This Court has perused the nominal roll placed on record and the same reveals that the conduct of the present petitioner has been satisfactory, in the last one year. Though, he had been awarded punishments in the year 2022, however, no punishment has been awarded to him after the year 2022, as per the nominal roll. Further, as on date, the present petitioner fulfills the criteria prescribed under Rule 1210 of the Delhi Prison Rules, 2018 as the said Rule prescribes criteria to be eligible for release on parole. The relevant portion of the same is reproduced as under:

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.

7. This Court also notes that Rule 1208 of the Delhi Prison Rules, 2018 provides filing of SLP before the Hon^{ble} Apex Court as one of the grounds for seeking grant of parole. The same is reproduced as under:

“1208. Subject to fulfilment of conditions stipulated in Rule 1210 below, it would be open to the Competent authority to consider applications for parole on the grounds such as :-

- i. Serious illness of a family member.
- ii. Critical conditions in the family on account of accident or death of a family member.
- iii. Marriage of any member of the family of the convict;
- iv. Delivery of a child by the legally wedded wife of the convict.
- v. Serious damage to life or property of the family of the convict including damage caused by natural calamities.
- vi. Sowing and harvesting of crops. vii. To maintain family and social ties.

- viii. **To pursue the filing of a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.”**
8. This Court notes that Courts have consistently emphasized that the right of a convict to file a Special Leave Petition challenging the dismissal of their criminal appeal by a High Court is a crucial right. This right cannot be denied based on the availability of free legal aid in jail and the possibility of filing the SLP from the jail premises. Given that the petitioner’s sole recourse for assailing his conviction now rests with the Hon“ble Apex Court, it is important to afford him the opportunity to pursue his legal remedy by filing the SLP through his chosen counsel.
9. This Court has also perused Rule 1212 (II) of the Delhi Prison Rules, 2018, which clarifies that two co-convicts cannot be granted parole during the same period, ordinarily. The said rule is reproduced, as under:
- Rule 1212.** A convict would be released on parole for a period of maximum eight weeks in minimum two spells in a conviction year. However, the period of release in one spell should not be more than four weeks. There should be one month gap between parole and last furlough availed and vice-versa.
- Note:
- (1) If the convict has applied for extension after surrendering from the original parole or his application for parole is pending decision when he surrendered after availing original parole then his case will be considered as fresh case.
- (2) **Simultaneous parole to co-accused is ordinarily not permissible**, however, in exceptional circumstances competent authority may consider for reasons in writing for granting parole to co-accused who are family members.
10. It is pertinent to note that the co-convict namely Bharat Bhardwaj has also sought parole and has been granted parole, on the ground of filing of SLP by way of a Writ Petition bearing No. W.P. (CRL) 1736/2023. Since as per the Rule 1212 (II), the co-convicts cannot be granted parole during the

same period, **the present petitioner will be released on parole for four weeks after the coconvict namely Bharat Bhardwaj surrender**, on the following conditions: -

- i. The petitioner shall furnish a personal bond in the sum of Rs.15,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
 - ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.
 - iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
 - iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
 - v. The petitioner shall furnish a copy of the SLP filed before the Hon'ble Supreme Court to the Jail Superintendent at the time of surrendering. A copy of the SLP shall also be placed on record before this Court.
 - vi. The period of parole shall be counted from the day when the petitioner is released from jail.
11. In above terms, the present petition stands disposed of.
 12. A copy of this order be sent by the Registry to the Jail Superintendent concerned for compliance.
 13. The judgment be uploaded on the website forthwith.

*Disclaimer: Always compare with the original copy of judgment from the official website.