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

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Reserved on: 21.12.2022
Pronounced on: 05.01.2023

+ **W.P.(CRL.) 3071/2022 & CRL.M.A. 27040/2022**

NEERAJ BHATT

..... Petitioner

Through: Mr. Kunal Malhotra and Mr.
Ravinder Gaur, Advocates

versus

THE STATE (GOVT. OF NCT) OF DELHI Respondent

Through: Mr. Sachin Mittal, ASC for
State with Mr. Nishant
Chauhan, Advocate and with
SI Mukesh Kumar, P.S.
Ambedkar Nagar

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by petitioner for issuance of writ in the nature of Certiorari for quashing of the order dated 03.11.2022 passed by the respondent rejecting the application of the petitioner seeking parole and also for issuance of writ in the nature of

Mandamus, directing the respondent to release the petitioner on parole for a period of four (04) weeks on the ground of filing Special Leave Petition (“SLP”) before the Hon’ble Supreme Court of India against the judgment dated 04.07.2022 passed by this Court in Criminal Appeal No. 391/2021 whereby the conviction and order on sentence was passed by learned Additional Sessions Judge, Saket Courts, New Delhi.

2. In the present case, the petitioner was arrested in FIR bearing No. 60/2014 registered at Police station Ambedkar Nagar, Delhi and *vide* judgment dated 05.12.2019, he was convicted under Sections 363/376(2) of Indian Penal Code, 1860 read with Section 6 of POCSO Act by learned ASJ-05, Special Court (POCSO), Saket Court, New Delhi and *vide* order on sentence dated 19.12.2019, the petitioner was sentenced to undergo rigorous imprisonment for ten years alongwith fine of Rs.5,000/- and in default, further rigorous imprisonment for 30 days under Section 376(2) of IPC, and to undergo rigorous imprisonment for seven years and fine of Rs.5,000/- and in default, further rigorous imprisonment for 30 days.

3. Learned Counsel for the petitioner states that the petitioner is presently confined in Central Jail No. 14, Mandoli, New Delhi and has already undergone incarceration of about 8 years and 6 months (excluding remission) out of R.I. for ten (10) years and fine. It is stated by learned counsel for the petitioner that petitioner desires to file an SLP for which he has sought parole. It is further stated that an application dated 23.09.2022 was filed before the Home Department, Government of NCT of Delhi and the same was dismissed by

respondent vide letter dated 03.11.2022, observing that there were no special circumstances that existed for grant of parole and the convict could file SLP from the jail itself where free legal aid is available to all prisoners.

4. On the other hand, learned APP for the State submits that considering his conduct in the jail as per Rules, parole cannot be granted to the petitioner.

5. Attention of this Court has been drawn by learned APP for the State to the fact that the present applicant is not entitled to parole in view of Rule 1210 sub rule (II) and Rule 1211 of Delhi Prison Rule, 2018. It is stated that as per the nominal roll, the present applicant has been awarded multiple punishments on 09.10.2021, 15.02.2022 and 07.06.2022. He therefore states that there is no illegality in the order passed by the competent authority i.e. Deputy Secretary, Home, NCT of Delhi and, therefore, the petition be rejected.

6. 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.”

7. The bar in the said rule is not absolute since the competent authority has the discretion, even in such cases, to grant parole, provided there exist special circumstances. Though the special circumstances were to be considered by the competent authority, the impugned order does not refer to the special circumstances and that

they were found insufficient for grant of parole, rather it only mentions that the SLP can be filed from the jail itself and that the conduct of the applicant was not satisfactory.

8. In this Court's opinion, the right of a citizen to avail a legal remedy in the final court of country, which may often be the last ray of hope, cannot be denied on such ground.

9. As per Rule 1211 of Delhi Prison Rule, 2018, it clearly mentions that parole in the circumstances mentioned in the said Rule can be granted in the discretion of the competent authority if special circumstances exist for grant of parole. The ground taken by the petitioner for grant of parole in the present case is filing of SLP against the judgment of the High Court in Criminal Appeal No. 391/2020 which was decided on 04.07.2022 whereby the judgment of conviction dated 05.12.2019 and order on sentence dated 19.12.2019 were upheld. It is the right of a citizen to effectively pursue his legal remedy in the last court of justice in the county by filing SLP through a counsel of his own choice which is a valuable right. This cannot be withheld merely on the basis of his past conduct or on the ground that free legal aid is available and that SLP can be filed from the jail itself. Needless to say, availing his legal remedy in the Apex Court of the country is the right of the petitioner and this Court is not inclined to withdraw the same.

10. While passing this order, this Court also remains conscious of the fact that the present accused/applicant has remained in

judicial custody since the day of arrest i.e. 11.05.2014 and is continuously in the jail for around eight years and six months, excluding remission.

11. In this view of the matter, the present petition is allowed. The petitioner is granted parole for a period of four weeks, subject to the following conditions:-

- i. The petitioner shall furnish a personal bond in the sum of Rs.20,000/- with one surety of the like amount, who shall be a family member of the petitioner, to the satisfaction of the trial court.
- ii. The petitioner shall report to the SHO of the local area, once a week on every Sunday at 10:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.
- iii. The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.
- 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 in the Supreme Court to the Superintendent Jail at the time of surrendering. A copy of the SLP shall also be placed on record in court.
- vi. The period of parole shall be counted from the day when the petitioner is released from jail.

12. In the above terms, the present writ petition alongwith pending application stands disposed of.

13. A copy of this order be sent by the Registry to the Jail Superintendent.

SWARANA KANTA SHARMA, J

JANUARY 05, 2023/ns

