

Rahul Gupta vs State (Nct Of Delhi) on 12 September, 2023

Author: Amit Sharma

Bench: Amit Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (CRL) 996/2023
RAHUL GUPTA

STATE (NCT OF DELHI)
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

% 12.09.2023

1. The present petition under Article 226 of the Constitution of India seeks the following prayers:

"a) Pass an order granting parole for a period of 03 Months for filing of the Special Leave to Appeal before the Hon'ble Supreme Court and for re-establishing social ties etc.; and

b) Pass such further order as this Hon'ble Court may deem fit in the fact and circumstances of the case."

2. Learned counsel for the petitioner submits that the latter has been convicted in case FIR No. 256/2010 registered at PS Vikas Puri under Sections 364A/302/201/34 of the IPC. It is submitted that vide order on sentence dated 05.09.2019, he has been sentenced to undergo life This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 18:47:14 imprisonment and a fine of Rs. 50,000/- each for offences under Sections 302 and 364A of the IPC; rigorous imprisonment for 03 years and a fine of Rs. 20,000/- for offence under Section 201 of the

IPC and in default of payment of fine, further simple imprisonment for 01 year. Substantive sentences were ordered to run concurrently. An appeal filed on behalf of the petitioner challenging his conviction and sentence was dismissed by a learned Division Bench of this Court vide judgment dated 23.12.2022 passed in CRL.A. 1200/2019 titled 'Rahul Gupta v. State' (Neutral Citation - 2022/DHC/005812).

3. It is submitted that the an application seeking parole dated 23.12.2022 was rejected by the competent authority vide communication No. F.18/21/2023/HG/1498-99 dated 29.05.2023 on the following grounds:

"1. As per Rule 1211 of Delhi Prison Rule-2018, which provide that:-

"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;

(X) If Prisoner is convicted for Murder after kidnapping for ransom. In this case, as per . crime details, the above said convict held guilty for committing kidnapping with murder for ransom.

2. Further as per report received from the office of the DG (Prisons), it is stated that the request for grant of parole of the above said convict on the grounds of social ties and filing SLP in Supreme Court, being generic, does not attract exceptional conditions to qualify relief under Rule 1211 of DPR-18."

4. Learned counsel for the petitioner submits that by way of the present petition, the latter seeks parole for a period of 03 months for the purpose of filing a Special Leave Petition before the Hon'ble Supreme Court and for establishing social ties. It is submitted that the petitioner has undergone 11 years 05 months and 25 days of sentence. It is further submitted that his jail This is a digitally signed order.

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5. It is submitted that conviction for commission of a serious offence cannot be the sole ground for rejection of parole. It is submitted that Rule 1211 of the Delhi Prison Rules provides that even in cases covered under the bar contained therein, parole can be granted, "if in the discretion of the competent authority special circumstances exist for grant of parole". It is submitted that filing of an SLP has been judicially recognised as a 'special circumstance'. In support of the said contention, learned counsel for the petitioner places reliance on the following judgments:

i. Rakesh v. State of NCT of Delhi, 2022 SCC OnLine Del 1346. ii. Neeraj Bhatt v. State (Govt. of NCT) of Delhi, 2023 SCC OnLine Del 32.

iii. Pilluwa v. State (GNCTD of Delhi), 2020 SCC OnLine Del 2537. iv. Asfaq v. State of Rajasthan and Others, (2017) 15 SCC 55. v. Somesh Gupta v. State of the NCT of Delhi, 2010 SCC OnLine Del vi. Sanjay Arora v. State of NCT of Delhi, 2012 (138) DRJ 89.

6. Per contra, learned Additional Standing Counsel for the State submits that the present petitioner has been convicted for commission of serious offences. He is a life convict. It is submitted that the petitioner is involved in another case, i.e., FIR No. 300/2010 under Sections 363/364A/302/34 of the IPC registered at PS Dabri. It was further submitted that Rule 1211 of the Delhi Prison Rules itself does not permit the present petitioner to be released on parole.

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7. Heard learned counsel for the parties and perused the record.

8. Rule 1211 of the Delhi Prison Rules, 2018 provides as under:

"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;

*** X. If prisoner is convicted for Murder after kidnapping for ransom."

The present petitioner has been convicted for offences under Sections 364A/302/201/34 of the IPC, which includes murder and kidnapping for ransom. Therefore, his case falls within sub-clause (X) of Rule 1211. However, it is noted that the bar contained therein is subject to existence of 'special circumstances'.

9. A learned Single Judge of this Court, in Rakesh v. State (NCT of Delhi, 2022 SCC OnLine Del 1346, while granting parole to a petitioner convicted for offences under the Protection of Children From Sexual Offences Act, 2012, held as under:

"8. As regards the observation that filing of SLP constitutes no "special circumstance" as there is free legal aid available, suffice it to note that the courts have not agreed with this stance of the Government. Under Article 22(1) of the Constitution as well as Section 303 Cr.P.C., an accused person has been guaranteed with a Constitutional right to engage a counsel/pleader of his own choice. It is no doubt true that the Legal Services Authorities at all levels endeavour to provide excellent legal assistance to those in prison. But, to deny the convict an opportunity to engage with other counsel to enable him to make up his mind freely, as to whom he would wish to engage, would violate his constitutional rights to legal representation. In fact, it is because of the recognition of this right that the State Prison Rules, 2018 dealing with parole and

furlough, recognizes that regular parole under Rule 1208 can be granted to a convict, to pursue filing of a Special Leave Petition before the Supreme Court.

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9. While this ground in the impugned order does not hold water, the more serious objection is encapsulated in ground (1), namely, that the Rules itself do not permit a prisoner convicted under POCSO Act for parole. 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) ☐☐☐☐ (VII) If the prisoner is convicted under POCSO;"

10. But this bar is not absolute, for, the competent authority has been vested with "discretion" even in such cases, to grant parole, provided there were special circumstances. It is clear that the impugned order does not refer to the "special circumstances" that were required to be considered and were found insufficient to grant parole. Rather, it is clear that the "special circumstances" or rather their absence, have been referred to only in respect of the filing of an SLP, but not for the entitlement of the applicant for parole under Rule 1211(VII) of the State Prison Rules.

11. To reiterate, a convict under the Pocso Act is not barred from seeking parole, as discretion has been vested in the competent authority to grant parole to such a convict under "special circumstances". What those "special circumstances" would be have not been spelt out. Nevertheless, it is clear that the facts of each case would reveal the "special circumstances" for grant of parole. The competent authority should keep in mind the purpose of parole as listed out in Rule 1200 of the Prison Rules. These are reproduced below for ready reference :

"1200. The objectives of releasing a prisoner on parole and furlough are :

(i) to enable the inmate to maintain continuity with his family life and deal with familial and social matters;

(ii) to enable him to maintain and develop his self-confidence;

(iii) to enable him to develop constructive hope and active interest in life;

(iv) to help him remain in touch with the developments in the outside world;

(v) to help him remain physiologically and psychologically healthy;

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(vi) to enable him to overcome/recover from the stress and evil effects of incarceration; and

(vii) to motivate him to maintain good conduct and discipline in the prison."

12. As has been held in Mahinder Singh v. State (NCT of Delhi) [Mahinder Singh v. State (NCT of Delhi), 2009 SCC OnLine Del 4411] , the grounds for declining parole are the following :

"(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; and

(iv) a reasonable possibility of the petitioner trying to intimidate or harm those who have deposed against him or their relatives."

13. Balancing the two would be an expected exercise of the respondent Department, while recommending parole or rejecting the application.

14. In the present case, the petitioner is one who has remained interned in prison for 8 years and more. He has never availed of bail, furlough or parole so far as revealed by the nominal roll. This continuous incarceration would be a significant factor for grant of parole. The long incarceration would have disrupted his family life and would have definitely impacted him physically and psychologically. In fact, all the objectives listed in Rule 1200 are applicable to him.

15. Moreover, he has, in all these times, maintained good conduct and discipline in the prison. There is no reasonable apprehension that the petitioner, if released on parole, may not return back to jail to undergo the remaining portion of the sentence awarded to him, or that he may escape the law, or that he may once again indulge in the same activity. Since the appeal has been already disposed of, there is no possibility of his intimidating or harming those who have deposed against him. In fact, the status report does not reveal any such possibility."

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10. A coordinate bench of this Court, in Neeraj Bhatt v. State (Govt. of NCT) of Delhi, 2023 SCC OnLine Del 32, while granting parole to a convict under the POCSO Act held as under:

"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."

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11. In view of the above, this Court is of the opinion that the bar contained in Rule 1211 of the Delhi Prison Rules is not absolute. The ground taken herein, i.e., filing on an SLP constitutes a 'special

circumstance' in terms of the said rule.

12. A perusal of the nominal roll dated 25.03.2023 reflects that the jail conduct of the petitioner is satisfactory and he is not involved in any other case. The nominal roll further reflects that the petitioner has undergone 11 years 05 months and 25 days of imprisonment. Upon expiry of the interim bail granted to the petitioner, he duly surrendered before the jail authorities. While he was out on interim bail, no complaints in relation to his conduct were received. As per the status report dated 22.07.2023 authored by Mr. Arvind Kumar, Assistant Commissioner of Police, ARSC, Crime Branch, the address of the petitioner, i.e., 'RZ-116/300, Gali No.-02, Geetanjali Park, West Sagarpur, Delhi' has been verified.

13. In view of the judicial pronouncements cited hereinabove and in view of the facts and circumstances of the case, the present petition is partly allowed. The petitioner is directed to be released on parole for a period of six weeks from the date of his release, 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 concerned Jail Superintendent. ii. The memo of parties reflects that the petitioner resides at 'RZ-

116/300, Gali No.-02, Geetanjali Park, West Sagar Pur, New Delhi. In case of any change in address, the petitioner is directed to inform the same to the concerned Jail Superintendent.

iii. The petitioner shall report to the SHO, PS Vikas Puri once a week, on This is a digitally signed order.

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v. The petitioner shall furnish his mobile number to the concerned jail authorities and to the Investigating Officer and keep it operational at all times.

vi. The petitioner shall surrender before the concerned jail authorities immediately upon the expiry of his parole.

14. The petition is accordingly disposed of.

15. Pending applications, if any, also stand disposed of.

16. Copy of this order be sent to the concerned Jail Superintendent for necessary information and compliance.

17. Order be uploaded on the website of this Court, forthwith.

AMIT SHARMA, J SEPTEMBER 12, 2023/bsr This is a digitally signed order.

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