

Nitin Chauhan vs State Of Nct Of Delhi & Anr on 15 October, 2020

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1691/2020

NITIN CHAUHAN

.....
Through Mr Vishal Raj Sehijpal, Advoca

versus

STATE OF NCT OF DELHI & ANR.

..... Respon

Through Mr Rahul Mehra, Standing Counsel
State.

Mr Nikhil Goel, SPP with Mr Dushyan Sarna
Advocate for CBI/R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 15.10.2020 [Hearing held through videoconferencing] CRL.M.A.14257/2020 & CRL.M.A.14258/2020

1. Allowed, subject to all just exceptions.

W.P.(CRL) 1691/2020

2. The petitioner has filed the present petition, inter alia, praying as under:-

"Issue a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing the respondent no.1 to withdraw the order/letter dated 17.09.2020 and to allow the extension of grant of emergency parole to the petitioner for a period of 08 weeks in accordance with provision of Para 5(2) GNCTD order No. F.18/181/2015/HG/1428-1438 dated 27.3.2020."

3. By a judgment dated 09.06.2014, the Trial Court convicted the petitioner for committing offences punishable under Sections 302 and 364 of the IPC. He was and thereafter, sentenced to life imprisonment. On 21.01.2015, the petitioner was transferred from Central Jail No.1, Tihar, New Delhi to District Jail, Dehradun, Uttarakhand. The petitioner preferred an appeal (Crl. A. No. 1114/2014) against his conviction and his sentence and the same was dismissed by an order dated 06.02.2018, passed by this Court. The petitioner has impugned the said order by way of a Special

Leave Petition (SLP No. 5069/2018) before the Supreme Court and the same is pending.

4. The petitioner was released on furlough for a period of three weeks by the concerned authorities by an order dated 10.08.2020. The same was extended for a further period of two weeks.

5. On 17.09.2020, the Superintendent District Jail, Dehradun issued a letter informing the petitioner that the period of furlough granted to him expired on 14.09.2020 and he was required to surrender immediately. The petitioner sought emergency parole but the same was not extended.

6. The petitioner states that in terms of paragraph 5(2) of the Office Order dated 27.03.2020, issued by the Government of NCT of Delhi, the petitioner is entitled for an emergency parole as all prisoners who were granted furlough/parole in the past are entitled to the same.

7. Mr Mehra, learned ASC appearing for the State submits that the said Office Order is not applicable to the petitioner as his case is sub judice before the Supreme Court. He referred to the decision of a Coordinate Bench of this Court in *Basant Vallabh v. State*: W.P.(Crl) 871/2020 decided on 07.07.2020 and submitted that in terms of the said decision, this Court had clearly held that it would not be apposite for the authorities to suspend the sentence in matters that were pending consideration before the Supreme Court.

8. It is seen that in the said order, the Court had referred to the decision of the Supreme Court in *K. M. Nanavati v. The State of Bombay*: AIR 1961 SC 112; the decision of the Full Bench of Rajasthan High Court in *Ramesh Kumar v. State of Rajasthan*: 2013 Crl.L.J. 2376; and the earlier decision of this Court in *Vikas Yadav v. State of NCT of Delhi*: W.P.No.236/2016 decided on 16.02.2016 and held that once an appeal is pending, the State would not entertain a petition for parole. The relevant extract of the said decision is set out below:-

"9. Rather in *K.M.Nanavati* (supra) the Supreme Court inter alia held:-

"18. Art. 161 can within certain narrow limits be exercised in the same field. The question that immediately arises is one of harmonious construction of two provisions of the Constitution, as one is not made subject to the other by specific words in the Constitution itself. As already pointed out, Art. 161 contains no words of limitation; in the same way, Art. 142 contains no words of limitation and in the fields covered by them they are unfettered. ...

19. On that principle the power under Art. 142 which operates in a very small part of the field in which the power under Art. 161 operates, namely, the suspension and execution of sentence during the period when any matter is sub-judice in this Court, must be held not to be included in the wider power conferred under Art. 161.

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21.But the suspension of the sentence for the period when this Court is in seisin of the case could have been granted by this Court itself. If in respect of the same period the Governor also has power-to suspend the sentence, it would mean that both the judiciary and the executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction.

25. As a result of these considerations we have come to the conclusion that the order of the Governor granting suspension of the sentence could only operate until the matter became sub judice in this Court on the filing of the petition for special leave to appeal. After the filing of such a petition this Court was seized of the case which would be dealt with by it in accordance with law. It would then be for this Court, when moved in that behalf, either to apply r. 5 of O. XXI or to exempt the petitioner from the operation of that rule. It would be for this Court to pass such orders as it thought fit as to whether the petitioner should be granted bail or should surrender to his sentence or to pass such other or further orders as this Court might deem fit in all the circumstances of the case. It follows from what has been said that the Governor, had no power to grant the suspension of sentence for the period during which the matter was sub judice in this Court."

10. In Ramesh Kumar vs State of Rajasthan 2013 Crl.L.J. 2376 the Full Bench of Rajasthan High Court, the Court held as under:-

".....In other words, the right of an accused/prisoner/convict to be released on parole cannot be considered by the State Government under the provisions of the Rajasthan Prisoners Release on Parole Rules, 1958 during the pendency of any appeal filed by him/her against his/her conviction."

11. In Vikas Yadav vs State of CT of Delhi this Court while deciding Writ Petition No. 236/2016 on 16.02.2016 also took similar view viz:-

"14. The foregoing discussion leaves no manner of doubt that when a challenge against the sentence awarded to the petitioner is pending determination before the Supreme Court in a criminal appeal, the power of the executive to consider a representation for parole made by the petitioner is eclipsed and cannot, therefore, be exercised.

15. Consequently, in view of the pendency of a criminal appeal instituted on behalf of the petitioner assailing the sentence awarded to him by the courts below, before the Supreme Court, the official respondent could not have entertained a representation for parole on his behalf in terms of the decision of the Supreme Court in K.M. Nanavati (supra). Accordingly, the present petition assailing the order passed by the competent authority rejecting the representation on behalf of the petitioner for grant of parole and seeking a direction to the official respondent to release the petitioner on parole, is also not maintainable, and is hereby dismissed whilst reserving liberty to

the petitioner to institute an appropriate proceeding in accordance with law, before the Hon'ble Supreme Court of India."

12. The learned counsel for petitioner submitted this Court is not bound by the decision in *Vikas Yadav* (supra) since it was a decision by Coordinate Bench. I may note in *Rajesh Kumar vs Govt. of NCT of Delhi* 2012 (2) Crimes 281 (Delhi) the Division Bench of this Court held as under:-

"7. We are however of the opinion that even when application for interim suspension of sentence or bail is filed by a convict in a pending appeal, it is always open to the convict to seek suspension/bail from this Court on the grounds as provided for regular parole and the High Court can always take those grounds in consideration while entertaining applications for suspension and/or interim suspension of the sentence. There is nothing in Section 389 or otherwise in law, barring the appellate Court from granting interim bail or suspending the sentence on considerations as for parole. Clause 10 very clearly stipulates that the "convict can seek appropriate orders from the High Court" which means that the convict can seek the order on parity of grounds for regular parole. Thus, the premise on which the petitioners impugn Clause 10, i.e of grounds as for regular parole being not available while seeking "appropriate orders from the High Court" is erroneous and thus the challenge to the vires of Clause 10 has no merit. On the contrary, we are rather of the view that the Govt./Jail Authorities cannot be permitted to exercise the powers to grant parole when this Court is seized of the matter in statutory appeal and the same if permitted would be in derogation of the Appellate Powers of this Court and may lead to a conflict."

13. Thus, the view of Division Bench was once the appeal is pending, the State would not entertain the petition for parole. Thus, Rule 1209 (supra) is in consonance with the view taken by the Courts above, hence there is no need to take any contrary view on this issue."

9. In view of the above, learned counsel appearing for the petitioner seeks to withdraw the present petition. He, however, submits that the petitioner had not surrendered on a bona fide belief that by virtue of the Order dated 27.03.2020, his emergency parole would stand extended to him. He requests that the petitioner be granted a few days to surrender.

10. In view of the above, the petition is dismissed as withdrawn.

11. However, it is clarified that if the petitioner surrenders on or before 20.10.2020, it would not be construed that he has jumped or over stayed his furlough/parole.

VIBHU BAKHRU, J OCTOBER 15, 2020 pkv