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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(CRL) 5/2025****SHAHID NASIR**

.....Petitioner

Through: Mr. Adit S Pujari, Mr. A Nowfal, Mr.
Mr. Mohammad Annus, Mr. Shereef
K.A., Mr. Md. Arif Hussain, Mr.
Manvendra Singh Sekhawat, Mr.
Sanu Mohammed, Advs.

versus

NATIONAL INVESTIGATION AGENCY AND ANR

.....Respondent

Through: Mr. Rahul Tyagi, SPP

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****ORDER**% **15.10.2025****CRL.M.A. 30756/2025 EARLY HEARING**

Bearing in mind the reasons explained, in the interest of justice the application is allowed and W.P. (CRL) 5/2025 is taken up for consideration today.

W.P.(CRL) 5/2025

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [Section 482 Cr.P.C.] seeking grant of custody parole for three days in RC No. 14/2022/NIA/DLI to enable the petitioner, who is an under-trial lodged in Central Jail No. 1, Tihar, to attend and participate in the *Fathiha* ceremony of his deceased mother-in-law, late Smt.



Sageerunnisa Begum. Petitioner filed an application for custody parole before the trial court with following prayer:-

"a) Enlarge the Applicant/Accused on Custody Parole so as to attend Fathiha ceremony regarding demise of his Mother-in-law and also solace, spend with his family for the period of one week in the interest of justice in NIA.2 of 2023 in RC-14/2022/NIA/DLI on the file of the Respondent;

b) Pass such orders as this Hon'ble Court may deem fit and appropriate."

2. The petitioner's application seeking custody parole was dismissed by the learned Sessions Court vide order dated 21.10.2024, on the ground that the death of his mother-in-law had occurred about two years earlier, no prior request for such permission had been made, and no material was placed to show that his personal presence was indispensable for performing the *Fathiha* ceremony. Being aggrieved, the petitioner has filed the present petition.

3. Ld. Counsel for the petitioner, submits that the mother-in-law of the petitioner, who was also his maternal aunt, expired on 21.10.2022, and as per family and religious traditions, the *Fathiha* ceremony- an Islamic prayer and commemorative ritual for the deceased, is to be performed in the presence of all close family members. It is contended that the petitioner, being the son-in-law of the deceased, is religiously and culturally obliged to participate and lead the said ceremony.

4. It is also stated that petitioner has been in judicial custody since 22.09.2022 and due to his incarceration, the petitioner has been unable to perform this ritual for the last two years. The family members have now fixed the date for the *Fathiha* ceremony again at the family residence in Gulbarga, Karnataka. It is contended that Rule 1203 of the Delhi Prison



Rules, 2018 mandates that Custody Parole may be granted to the under trial prisoner in the eventuality of death of family member.

5. Ld. Counsel for the petitioner further submits that the petitioner's right to perform religious rites and duties is protected under Articles 21 and 25 of the Constitution of India. It is contended that denial of permission to participate in this religious obligation would cause deep emotional trauma to the petitioner and his family members, and would amount to an unreasonable restriction upon his fundamental right. It is prayed that custody parole be allowed.

6. *Per contra*, learned Special Public Prosecutor for the NIA opposes the application. It is submitted that the case against the petitioner as per allegations in chargesheet- pertains to conspiracy wherein the petitioner acted as the Treasurer of the Karnataka unit of the banned organization Popular Front of India (PFI). It is alleged that he, along with other office bearers and members of the organization, was involved in raising and channelizing funds for the purposes of carrying out unlawful and terrorist activities and propagating a divisive ideology against the Government of India. The charges against the petitioner are under Sections 120B/153A IPC and Sections 13/17/18/18A/18B/22C/38/39 of the Unlawful Activities (Prevention) Act, 1967.

7. Learned SPP states that the petitioner is not eligible for custody parole and that *Fathiha* ceremony is not an essential ritual/ceremony and is optional and petitioner is not necessarily required to attend the same.



8. It is argued that the trial court dismissed the petitioner's plea for grant of custody parole as petitioner could not make a fit case for the same, and therefore, there is no impropriety or infirmity in the orders passed by the learned trial court. It is prayed that considering the seriousness of the offence committed, custody parole plea of the petitioner be rejected.

9. The Court has considered the submissions of both sides and perused the record. It is a well-settled principle of law that a prisoner, whether convicted or under-trial, continues to enjoy the protection of the fundamental rights guaranteed by the Constitution, save to the extent curtailed by the fact of lawful detention. Article 21 of the Constitution guarantees the right to life and personal liberty, which encompasses within its ambit the right to live with human dignity and to observe one's religious duties and personal obligations.

10. The relief of custody parole is granted to the inmates for specific eventualities which is governed by Rule 1203 of the Delhi Jail Manual, 2018, which reads as under:-

"1203. "Custody Parole" may be granted to the convict by an order in writing, issued by the Superintendent Prison and to the under trial prisoners by the trial court concerned, for a period of not more than six hours, excluding the time taken to reach the destination and return to Prison, in the following eventualities:

- i. Death of a family member;
- ii. Marriage of a family member;
- iii. Serious illness of a family member or
- iv. Any other emergency circumstances with the approval of DIG(Range) of prisons."

11. The purpose of custody parole is to allow a prisoner to attend to pressing humanitarian or personal obligations such as funerals, last rites, or



significant family functions, under strict supervision of the authorities. It is a temporary measure, humane in character, that ensures a balance between the interests of justice and human dignity.

12. In the present case, the request of the petitioner is limited to attending the *Fathiha* ceremony of his deceased mother-in-law. The same is rooted in religious and cultural obligation, and the duration sought is minimal. There is nothing on record to suggest that the petitioner has misused any earlier concession of bail or parole, or that he poses a security threat if escorted under proper supervision.

13. Considering the nature of the request, its limited duration, and the assurance of the petitioner to bear all expenses of the escort, this Court is of the view that the prayer deserves to be allowed, subject to necessary safeguards.

14. Accordingly, it is directed that the petitioner shall be released on custody parole for two days (excluding the journey time), i.e. from 23.10.2025 to 24.10.2025, to enable him to attend and participate in the *Fathiha* ceremony of his deceased mother-in-law at his residence situated at Gulbarga, Karnataka, subject to the following conditions:-

- i. The petitioner shall remain in police custody at all times and shall be escorted by an adequate number of police personnel to and from the place of the ceremony;



- ii. The custody parole shall be executed under the overall supervision of the Jail Superintendent, Tihar, in coordination with the NIA and the local police authorities at Gulbarga;
 - iii. It be directed that the petitioner would not go to any other place except to attend *Fathiha* ceremony of his deceased mother-in-law at the address provided;
 - iv. It is directed that the petitioner shall stay in lock-up at the concerned local Police station during night time;
 - v. The expenses of travel, escort, and logistics shall be borne entirely by the petitioner's family;
 - vi. The petitioner shall not make any statement to the media, nor interact with anyone other than close family members and such persons as are necessary for the conduct of the religious ceremony;
 - vii. The petitioner shall not use or possess any mobile phone or communication device during the parole period;
 - viii. Petitioner will not be allowed to mix in the crowd and shall sit separately;
 - ix. Upon completion of the custody parole period, the petitioner shall be brought back to Central Jail No. 1, Tihar, New Delhi, immediately.
15. In case of any violation of any of the above conditions, the custody parole would come to an end immediately and the petitioner would be brought back to the prison.



16. The jail authorities concerned are directed to ensure adequate safety/security measures while taking the petitioner for custody parole. They may also coordinate with the local police station and NIA for ensuring law and order situation and take suitable measures to ensure that petitioner does not flee away during custody parole.

17. The State Police shall extend full cooperation required for implementation of this order.

18. It is made clear that the custody parole has been granted only on humanitarian consideration in the circumstances of the case and shall not be taken as a precedent.

19. In the above terms, the present petition alongwith pending application(s), of any, stands disposed of.

20. Copy of this order be sent to the Superintendent Jail for information and compliance.

RAVINDER DUDEJA, J

OCTOBER 15, 2025/AK