



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

Judgment delivered on: 13.02.2024

+ W.P.(CRL) 60/2024

RAKESH KUMAR

..... Petitioner

Through: Mr. Akshay Bhandari, Ms. Megha Saroa and Mr. Anmol Sachdeva, Advocates.

versus

STATE GOVT OF NCT OF DELHI AND ANR. Respondents

Through: Mr. Yasir Rauf Ansari, ASC with Mr. Mohit Raj Nagar, Mr. Alok Sharma and Mr. Vasu Agarwal, Advocates with SI Rahul Bisht, PS: Jagatpuri.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been preferred on behalf of the petitioner for extension of parole for a period of six months in Execution Case No. 50/2011 arising out of case No. 231/1998 from District Consumer Forum, Delhi.

2. In brief, as per the case of petitioner, he has already undergone 07 years of custody having been sentenced to a total period of 182 years in jail in Execution Case No. 50/2011 arising out of case No. 231/1998 by District



Consumer Forum, Tis Hazari Courts, Delhi. The said case was instituted by respondent No.2 (Triputi Township Plot Holder Association), which represents the interest of plot buyers. The petitioner is stated to have been released on parole vide order dated 13.09.2019 by this Court, which has been extended from time to time in view of his assurance to settle the claims. The last order was passed on 10.01.2024 extending the parole granted vide order dated 10.07.2023 during pendency of this petition, till the next date of hearing.

3. Learned counsel for the petitioner submits that petitioner is expected to receive the compensation for land acquired by Ghaziabad Development Authority, which would be sufficient to cover the interests of plot buyers excluding those whose cases have already been settled by the petitioner. Proceedings are stated to have been initiated in aforesaid regard at Allahabad High Court and parole is sought to be extended in order to enable the petitioner to pursue the litigation proceedings and arrange the funds.

It is also contended that grave prejudice will be caused, if the petitioner is not released on parole, as he may not be able to follow up the legal proceedings for arranging the amount.

4. On the other hand, the petition is opposed by learned ASC for the State and a status report only reflecting the address of the petitioner has been filed on record.

5. Respondent No. 2 (Tirupati Township Plot Holder Association) through its General Secretary has supported the application for parole filed by the petitioner.

6. A copy of order dated 17.02.1998, passed by Consumer Disputes Redressal Forum District Forum – I, reflects that 344 complaints were filed



against the respondents therein including petitioner Rakesh Kumar. M/s. Tirupati Associates/Tirupati Builders, Rakesh Kumar Dua and Rajinder Mittal were directed to pay the amount due along with interest @ 18 % per annum along with Rs.20,000/- as compensation and Rs. 500/- as cost of litigation to each complainant, failing which action under Section 27 of the Consumer Protection Act was proposed be taken.

Appeals preferred therein were dismissed by the State Commission, since the principal amount deposited by 344 complainants amounting to Rs. 90,79,396.88/- was stated to have been grafted, which was deposited for purchase of plots. Since the orders/directions of the Consumer Forum upheld by Appellate Forum, were not complied with, petitioner was sentenced under Section 27 of the Consumer Protection Act to undergo simple imprisonment for one year each in 20 cases, in which the principle amount paid by the complainants exceeds Rs. 50,000/- and six months simple imprisonment was directed in other 324 cases. The sentences were directed to run consecutively. The sentence was also suspended by the Consumer Forum for a period of 03 months in order to enable the petitioner and other respondents therein, to make the payment.

7. At the outset, it may be observed that proceedings and orders passed by District Consumer Forum are not a subject matter of challenge before this Court and present petition only relates to extension of parole, which is governed by Delhi Prison Rules, 2018.

8. The relevant provisions of Delhi Prison Rules, 2018 for extension of parole have been referred in *Sikander vs. State of Delhi, 2022 SCC OnLine Del 1641* and may be briefly reproduced:



“7. Under Section 71 of the said Act (i.e. Delhi Prisons Act), the Government has been empowered for making the rules generally to carry out the provisions of the Act and specifically to provide for or any of the matters listed in Section 71 (2) of the said Act. Chapter XIX of Delhi Prison Rules, 2018 framed in pursuance of power conferred under Section 71 of the Delhi Prison Act, 2000 deals with parole and furlough. The purpose of parole and furlough as provided in Rule 1197, is a progressive measure of correctional services. The release of prisoner on parole saves the prisoner, not only from the evils of incarceration but also enables him to maintain social relations with his family and community. Further, the release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison. However, it may be noticed that period spent by prisoner outside the prison while on parole in no way is a concession, so far as his sentence is concerned and the prisoner has to spend extra time in prison for the period spent by him outside the Jail on parole. On the other hand, furlough is purely an incentive for good conduct in the prison and, therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence. The same is granted after a gap of certain qualified number of years of incarceration for maintaining good conduct.

8. The objectives for releasing a prisoner on parole or furlough are further specified in Rule 1200. Rule 1208 further lays down that subject to fulfillment of conditions stipulated in Rule 1210, it would be open to the Competent Authority to consider the applications for parole on the grounds provided therein. Though, one of the purposes for grant of parole is to maintain family and social ties but the same cannot be oblivious of the jail conduct of the prisoner and is circumscribed by Rule 1210 as well as Rule 1211 of Delhi Prison Rules, 2018.”

9. A bare perusal of Rule 1207 of Delhi Prison Rules, 2018 reflects that Competent Authority to consider the cases for granting or extending regular Parole, other than cases falling under Rule 1211, is Lieutenant Governor of Government of National capital Territory of Delhi or any other officer to whom the power may be delegated in this regard. Rule 1212 further provides that 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.

Further, the note to Rule 1212 reflects that 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. Also, a detailed procedure has been prescribed for disposal of applications under Rule 1213.

10. In *Kiran vs. State*, 2019 SCC OnLine Del 6578 relied upon by learned counsel for the petitioner, the application for grant of parole was rejected by the competent authority on account of a major punishment afflicted to the petitioner. The prayer for grant of parole was allowed by this Court holding that powers of the High Court under Article 226 of the Constitution of India cannot be curtailed, which is required to be exercised to meet the ends of justice and in case, the release of prisoner on parole is warranted in the exigencies. The observations in paragraphs 11 and 12 therein may be beneficially referred:

“11. As noted above, Rule 1210 (II) provides that the conduct of the prisoner who has been awarded major punishment for any prison offence should have been uniformly good for the last two years from the date of application and the conduct of the prisoner who has been awarded minor punishment or no punishment for any prison offence should have been uniformly good for the last one year from the date of application. It shows that once a major punishment is provided it has the effect for non-grant of parole for a period of two years. This would be applicable when the prisoner seeks parole in order to maintain social ties or for general circumstances and not special circumstances. Further the power of the High Court under Article 226 of the Constitution of India cannot be curtailed



which is required to be exercised to meet the ends of justice and in case the release of the prisoner on parole is warranted in the exigencies, the Court is duty bound to exercise the jurisdiction.

12. In the decision reported as 2000 (8) SCC 437 Dadu @ Tulsidas Vs. State of Maharashtra the Supreme Court dealing with the constitutional validity of Section 32(A) of the NDPS Act held:-

29. Under the circumstances the writ petitions are disposed of by holding that:

(1) Section 32-A does not in any way affect the powers of the authorities to grant parole.

(2) It is unconstitutional to the extent it takes away the right of the Court to suspend the sentence of a convict under the Act.

(3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment.”

11. The proposition in this regard is well-settled that the bar of judicial intervention to direct temporary release of a detenu would not affect the jurisdiction of the High Courts under Article 226 of the Constitution of India or the Hon’ble Apex Court under Article 32, 136 or 142 of the Constitution of India, to direct the temporary release of detenu, where request of detenu to be released on parole for a specified reason and / or for a specified period has been, in the opinion of the Court unjustifiably refused or where, in the interest of justice such an order of temporary release is required to be made. Reference in this regard may be made to *Sunil Fulchand Shah vs. Union of India and Ors.*, 2000 (1) SCR 945. The said jurisdiction is to be exercised sparingly by the Court, wherein the facts and circumstance so deserve for



passing of directions despite the specific provisions in the relevant Prison Rules.

12. However, in the present case, the petitioner has been avoiding the execution of legal sentence for years together without even preferring the applications before the Competent Authority for extension of grant of parole in accordance with Delhi Prison Rules, 2018. The automatic extension of parole by way of writ petitions, which has continued for about 04 years, cannot be considered in routine, ignoring the provisions of Delhi Prison Rules, 2018. The sentence imposed cannot be escaped and parole endlessly continued merely on the ground that efforts are being made by the petitioner to arrange the funds for settling the cases with plot buyers. This would be contrary to the scheme for grant of furlough and parole provided under Delhi Prison Rules, 2018. The grant of parole is a privilege and not a right to be extended in routine for the periods over and above as specified in the Rules only in exceptional circumstances.

For the foregoing reasons, petition is without any merit and is accordingly dismissed. Pending application, if any, also stands disposed of.

A copy of this order be forwarded to the Superintendent Jail and concerned court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 13, 2024/R