
(2010) 08 DEL CK 0267

Delhi High Court

Case No: Writ Petition (Criminal) 451 of 2010

Rattan Pal

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision: Aug. 25, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 376(2)

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: S.B. Dandapani, for the Appellant; Sanjeev Bhandari, for the Respondent

Judgement

Hima Kohli, J.

The petitioner has filed the present petition through jail, praying inter alia for quashing of the order dated 28.01.2010 by which, his application for grant of parole was rejected, and seeking his release for a period of three months on parole to re-establish social ties with his family and make financial arrangements for them. While passing the impugned order, the respondent/State rejected the application of the petitioner for grant of parole on the ground that there was an adverse police report stating that the family of the victim and the people in the vicinity were shocked to hear that the petitioner was trying to come out of jail on parole and that the family of the victim was still in mental shock and the victim was trying to cope with frustration and stigma.

2. Notice was issued on the present petition on 23.03.2010 whereafter, a status report dated 13.07.2010 was filed by the respondent/State. In the status report, it was stated that enquiry through SHO, PS Farsh Bazar was conducted and the address of the petitioner was got verified; that the father of the petitioner was working as a rickshaw puller and the financial condition of the family of the petitioner was very poor. Rest of the averments were a reiteration of the grounds given in the impugned order dated 28.01.2010, for rejecting the request of the petitioner for grant of parole. Alongwith the status report, a communication from

the Delhi Police is placed on the record wherein, it was noted that the family of the petitioner had sold their house situated in Shahdara and had shifted to District Ghaziabad, U.P.

3. Counsel for the petitioner submits that the petitioner is entitled to grant of parole at least for a period of 30 days to enable him to restore his family ties and to try and arrange some funds and his family members who are on the verge of starvation.

4. This Court has heard the counsels for the parties and perused the record. The petitioner is convicted of the offence u/s 376(2)(f)/323 IPC. The quantum of sentence imposed on him is 10 years" rigorous imprisonment and a fine of Rs. 20,000/- in default of which, simple imprisonment of two years. As per the nominal roll received from Dy. Superintendent, Central Jail No. 2, Tihar, as on 20.07.2010, the petitioner had undergone a period of conviction of 6 years, 2 months and 22 days, and earned remission for a period of 1 year and 9 months, leaving an unexpired period of sentence of 2 years and 8 days. His conduct in the past one year in jail is found to be satisfactory. There are no other pending cases against the petitioner, apart from the present one. The petitioner has stated that his family comprises of aged parents, two younger sisters and one younger brother with whom, he wants to re-establish social ties and arrange finances as they are on the verge of starvation. The financial condition of the family of the petitioner has been confirmed by the respondent to be precarious.

5. Grant of parole is an executive function and ordinarily, it is for the Government and not for the Court to consider such a request and take a decision thereon. However, the orders passed by the Government can certainly be scrutinized to examine, if they are based on extraneous and/or irrelevant consideration. The ground given by the respondent for rejecting the application for parole sought by the petitioner that the victim and people in the vicinity were shocked to hear that he was trying to come out of jail on parole and that the victim is still in mental shock, has to be balanced with the right of the petitioner for grant of parole for genuine and valid reasons. As observed by the Supreme Court in the case of [Poonam Lata Vs. M.L. Wadhawan and Others](#), "Release on parole is a wing of reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen."

6. In [Inder Singh and Another Vs. The State \(Delhi Administration\)](#), the Supreme Court had devised another humanising strategy, viz., a guarded parole release every year at least for a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by living in a small world of his own cribbed, cabined and confined within the four walls of the prison. In the case of Inder Singh (supra), the Supreme Court had directed that:

12. ...If the behavior of these two prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their

family ties may be maintained and inner tensions may not further buildup. After every period of one year, they should be enlarged on parole for two months....

7. In the present case, considering the fact that as per the report of the respondent itself, the family of the petitioner is no longer residing in Shahdara and has shifted to District Ghaziabad, UP, the question of the petitioner being in the immediate vicinity of the family of the victim does not arise. Admittedly, the petitioner has not come out on parole even once during all the period of his incarceration. Hence, there appears no serious apprehension of breach of law and order in case, the petitioner is granted parole for one month. Nor has the respondent expressed any threat of commission of some other offence by the petitioner, if he is permitted to come out on parole.

8. Having regard to the facts and circumstances of the present case, there is no material on record to justify any apprehension that the petitioner, upon being granted parole, shall not return back to jail particularly, when he has undergone a major part of the conviction imposed on him. For the aforesaid reasons, the impugned order dated 28.01.2010 is set aside and the petitioner is directed to be released on parole for a period of one month from the date of his release, subject to the following conditions:

(i) The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- with two sureties of the like amount to the satisfaction of the trial court. While one surety shall be local, the second surety may be from Ghaziabad, where the family of the petitioner is now residing.

(ii) The petitioner shall mark his presence in Police Station: Shahdara at 10 AM on every Sunday and during the period of parole, he shall not visit Shahdara for any purpose except for marking his presence in Police Station: Shahdara.

(iii) The petitioner shall keep away from the area around the residence of the victim and her family members.

9. The petition is disposed of.