

(2010) 08 DEL CK 0268

Delhi High Court

Case No: Writ Petition (Criminal) No. 941 of 2010

Sushil Kumar Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 25, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: Hima Kohli, J**Bench:** Single Bench**Advocate:** Mukesh Kalia and Sumita Kapil, for the Appellant; Sanjeev Bhandari, ASC, for the Respondent

Judgement

Hima Kohli, J.

The present petition is filed by the petitioner praying inter alia for quashing of the order dated 1.6.2010 passed by the Deputy Secretary: Home(General), Government of NCT of Delhi, rejecting the request of the petitioner for parole for a period of three months on the ground of adverse police report and possibility of committing similar type of offence.

2. The nominal roll dated 17.7.2010 forwarded by the Deputy Superintendent, Central Jail shows that the petitioner has been awarded death sentence under Sections 302/201/34 IPC and the period of sentence undergone by him as on 12.7.2010, is 14 years 11 months and 15 days.

3. Counsel for the petitioner states that the need for the petitioner to seek parole has arisen on account of his mother's deteriorating health for which she is required to undergo certain procedures in the hospital. He submits that on 29.12.2009, the mother of the petitioner suffered a massive heart attack and was admitted in the Cardiology Unit of the Jaipur Golden Hospital. Her medical certificates were placed on record, along with CrI.Misc. No. 8270/2010. In view of the aforesaid submissions, a status report was directed to be filed by the State. In the status report dated

5.7.2010 filed by the SHO, Connaught Place, it is stated that enquiries were made from Dr. Pramod Kumar, Chairman & HOD Cardiology who confirmed that the mother of the petitioner aged 68 years, suffered a severe heart attack on 29.12.2009 and was admitted in the Cardiology Unit of the Jaipur Golden Hospital and is required to undergo Echo Test and Angiography in the hospital as early as possible.

4. Counsel for the petitioner states today, on instructions from his client, that the petitioner may be granted permission to try and arrange funds for the tests and the surgery, if any, recommended for his mother, by making telephonic calls from the Central Jail, to his relatives and friends, and to phone Dr. Pramod Kumar, under whose treatment his mother is stated to be at the Jaipur Golden Hospital, to know her current health status. He further seeks permission to visit his mother in custody at her residence at Pitam Pura, New Delhi, a week prior to the angiography recommended for her.

5. Having regard to the aforesaid submissions made by the Counsel for the petitioner, the Superintendent, Central Jail is directed to permit the petitioner to make telephone calls from within the Tihar Jail to his relatives/friends whose names and telephone numbers shall be furnished by the petitioner within one week. The list shall not exceed 10 in number. The said calls shall be made by the petitioner well within the hearing of the jail authorities. The petitioner shall also be permitted to telephonically contact Dr. Pramod Kumar, under whose treatment his mother is stated to be at Jaipur Golden Hospital, within the hearing of the jail authorities. Finally, the petitioner is permitted to visit his mother at her residence, in custody one week prior to the date of her angiography, for one day starting at 10AM and to report back to Jail by 5PM. The date of the surgery shall be communicated in writing to the jail authorities one week in advance.

6. At this stage, Counsel for the petitioner states that the petitioner is very keen to donate blood for the surgery that his mother may have to undergo and the jail authorities may be directed to collect a unit of blood from the petitioner, for it to be forwarded to the hospital, if so required. In case any intimation is received by the jail authorities from the hospital for arranging blood for the surgery, if any, required to be undertaken by the mother of the petitioner, he be permitted to visit the Jail Hospital for donating a unit of blood which shall in turn be dispatched to the hospital in question.

7. Now coming to the conduct of the police officers in the present case, perusal of the file reflects that after notice was issued in the present petition on 11.6.2010, a status report was filed on behalf of the State, under an index dated 5.7.2010. The said status report enclosed a photocopy of the letter dated 5.4.2010 addressed by the Additional Commissioner of Police, New Delhi District to the Superintendent, Central Jail verifying the contents of the application for parole made by the petitioner. At Sl. No. 5 of the letter, it was stated by the ACP/PG as below:

5: There is no possibility of jumping out the parole by him.

8. Apart from the aforesaid report, a decision of the Deputy Secretary: Home (General), Government of NCT of Delhi communicated, vide letter dated 1.6.2010, to the Superintendent, Central Jail rejecting the request of the petitioner for parole was also placed on record. On perusing the aforesaid status report submitted by the Delhi Police, in the face of a negative report of the GNCT of Delhi, the court had expressed its surprise and directed the Counsel for the State to inform the court as to the basis on which the aforesaid observation was made by the A.C.P. as recorded at Sl. No. 5 of the reply dated 5.4.2010. Learned ASC for the State states on instructions from the Additional Commissioner of Police, New Delhi District that the aforesaid reply dated 5.4.2010 though signed for and on his behalf, was in fact never shown to him. He has also produced a noting file of the department in this regard.

9. Considering the gravity of the offence for which the petitioner has been awarded death sentence, it is quite apparent that all is not well within the Department and the letter dated 5.4.2010 has been tailor made. It is amazing that a report of the kind as submitted for and on behalf of the Additional Commissioner of Police is stated to have been put up at the level of the S.I., duly endorsed by the S.H.O. and released by the office of the Additional Commissioner of Police to finally reach the Court, without any vetting of any kind, at any level. In the above circumstances, it is deemed appropriate to direct the Commissioner of Police, Delhi to hold a departmental enquiry, fix responsibility, and punish the guilty officers for trying to mislead the court, as also the State, by submitting such a status report in court. An action taken report shall be placed on record within six weeks from today.

10. The petition is disposed of.

11. List for report on 12.11.2010.

DASTI to the Counsels for the parties.