
(2010) 10 DEL CK 0278

Delhi High Court

Case No: Writ Petition (Criminal) 1283 of 2010

Veena

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Oct. 5, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: V.K. Jain, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Sumeet Verma, for the Appellant; Sanjeev Bhandari, ASC, for the Respondent

Judgement

V.K. Jain, J.

This petition under Article 226 of the Constitution of India is directed against the Order No. F.18/166/2010/Home (G)/3066 dated 17.6.2010 passed by the respondent Govt. of NCT of Delhi, rejecting the prayer of the petitioner for grant of parole.

2. The petitioner was convicted u/s 302 of IPC for committing murder of her first husband. Her appeal was dismissed by a Division Bench of this Court on 15.10.2009. The petitioner, who presumably was on bail at the time of dismissal of her appeal, surrendered on 28.10.2009 and was sent to judicial custody to undergo the sentence awarded to her. Since she intended to prefer a SLP against the order of this Court on 15.10.2009, dismissing the appeal filed by her, she applied to the respondent for grant of parole. The request having been rejected she has filed this petition challenging the impugned order.

3. A perusal of the order passed by Govt. of NCT on 17.6.2010 would show that her request for grant of parole was rejected solely on the ground that she had remained on bail for 10 years and was yet to complete one year in jail, which made her ineligible for grant of parole.

4. The appeal filed by the petitioner having been dismissed by a Division Bench of this Court, SLP to the Supreme Court is the last remedy available to her to prove the innocence which she claims. The Government, therefore, needs to appreciate the anxiety of the petitioner to engage a lawyer of her own choice, and to brief him properly so as to enable him to present her case effectively and to her complete satisfaction, before the Supreme Court.

5. While deciding WP (Crl) No. 1749/2009 wherein parole was sought to file SLP before the Hon"ble Supreme Court, against an order dismissing the appeal filed by the petitioner, I inter alia observed as under:

The request for grant of parole, to file SLP before the Hon"ble Supreme Court against conviction and sentence for a serious offence certainly stands on a stronger footing than the desire to maintain links with the society and to reunite with the family. Hence, ordinarily such requests ought to be allowed unless there are reasonable grounds which warrant taking a different view in a particular case. Such grounds may include:

i) A reasonable apprehension, based upon material available with the Government such as the circumstances in which the offence is alleged to have been committed by him and the other cases if any in which he is involved, that the petitioner, if released on bail may not return back to jail to undergo the remaining portion of the sentence awarded to him;

ii) A serious apprehension of breach of law and order or commission of another offence by the petitioner if he comes out on parole;

iii) Past conduct of the petitioner such as jumping the bail or parole granted earlier to him;

iv) A reasonable possibility of the petitioner trying to intimidate or harm those who have deposed against him or their relatives.

It is neither possible nor desirable to exhaustively lay down all such grounds as would justify denial of parole in a particular case. Each case has to be examined by the Government dispassionately and with an open mind, taking into consideration all relevant facts and circumstances.

6. In my view, the Government was not justified in declining the parole to the petitioner merely because she had not completed one year in jail. The bail to the petitioner must have been granted considering the merits in her bail application. Therefore, it would not be justified to decline parole to her for the purpose of filing SLP in Supreme Court merely because she has not spent one year in custody. This is not a case where the convict is absconding and consequently remained in judicial custody for less than one year. Here, the petitioner was in jail for less than one year on account of the bail granted to her by the Court(s). In fact, I find absolutely no logic behind insisting upon the convict spending at least one year in judicial custody

for grant of parole to him/her, even for the purpose of filing SLP before the Supreme Court, which is the Constitutional right of every Citizen of the Country, including a convict.

7. Taking into consideration all the facts and circumstances of the case, including the fact that the petitioner is a woman and there is no allegation of her having jumped bail or having absconded, I am of the view that the order declining parole to her is unjustified, irrational and arbitrary. The impugned Order No. F.18/166/2010/Home (G)/3066 dated 17.6.2010 is hereby set aside and the petitioner is directed to be released on parole for a period of one month from the date of her release, subject to the following conditions:

(i) She shall furnish a personal bond in the sum of Rs. 10,000/- with one surety of the like amount to the satisfaction of the trial court.

(ii) During the period she remains on parole, she shall mark her presence in police station Moti Nagar at 10 AM on every Sunday.

(iii) She shall not visit any place, outside Delhi.

(iv) She shall not try to contact or communicate in any manner with any of the witnesses of this case.

(v) She will submit a copy of the SLP filed by her to the SHO, police station Moti Nagar within four weeks from the date of her release and will communicate the name of the Counsel who filed the special leave petition.

(vi) She shall comply with such other conditions as the Government may decide to impose upon to her in order to ensure that the petitioner does not jump parole.

(vii) While submitting the bail bond, she will furnish to trial court, address of the place where she would reside in Delhi during the period of parole. It would be open to the concerned SHO to verify the address and seek cancellation of parole in case it is found to be incorrect.

The W.P. (Crl.) No. 1283/2010 stands disposed of.