

Ms. Kiran vs.state

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Court : Delhi

Decided On : Jan-14-2019

Appellant : Ms. Kiran

Respondent : State

Judgement :

\$~54 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + MS. KIRAN Date of Decision : January 14, 2019 W.P.(CRL) 74/2019

... Petitioner

Represented by: Mr.Sunil Mehta, Advocate versus STATE Represented by: Mr.Rajesh Mahajan, ASC for the Respondent State with Ms.Jyoti Babbar, Advocate and SI Vinok Kumar, Narcotic Cell, Crime Branch CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(Oral) 1. At the outset, learned counsel for the petitioner prays that the prayer clause (ii) of the writ petition be read as seeking parole for the marriage of the granddaughter and for re-establishing social ties.

2. On the oral prayer, prayer (ii) of the writ petition be read as noted above.

3. 4. On a notice being issued, a status report has been filed. As noted above, the petitioner seeks parole on the ground of marriage of her granddaughter. Along with the petition, the petitioner has placed on record documents to show that the son-in-law and sons of the petitioner have passed away. Thus she has a daughter

and granddaughter whose marriage is to be performed. Claim of the petitioner is that since her daughter is only W.P.(CRL) 74/2019 page 1 of 8 there to look after the affairs of marriage of her granddaughter, her presence at the time of marriage is essential.

5. The factum of marriage of granddaughter of petitioner to be performed on 26th January, 2019 has been verified. The fact that the petitioners son-in-law and sons have also passed away is also not in dispute.

6. Learned Additional Standing Counsel for the State submits that the new Delhi Prison Rules, 2018 have come into existence. On their being notified with effect from 1st January, 2019 and by virtue of Rule 1210(II) in case the prisoner has been awarded any major punishment in the last two years from the date of application then the prisoner is not eligible for grant of parole and hence this Court would not grant the relief of parole to the petitioner as the petitioner was awarded major punishment for misconduct in the jail on 25th October, 2017 which was approved by the learned District and Sessions Judge on 28th October, 2017.

7. Before dealing with the contention of learned counsel for the State, it would be appropriate to note Rules 1207 to 1211 of the Delhi Prisons Rules, 2018 which are relevant for the present petition. The Competent Authority to consider the cases 1207. 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 of Government of National capital Territory of Delhi to whom the power may be delegated by the Lieutenant Governor in this regard. However, for the cases falling under Rule 1211, the Competent Authority will be the Government Lieutenant Governor of Government of National capital Territory of Delhi. W.P.(CRL) 74/2019 page 2 of 8 1208. Subject to fulfillment of conditions stipulated in Rule 1210 below, it would be open to the Competent authority to consider applications for parole on the grounds such as :-

"i. ii. Serious illness of a family member. Critical conditions in the family on account of accident 332 Delhi Prison Rules, 2018 or death of a family member. iii. Marriage of any member of the family of the convict; iv. Delivery of a child by the legally wedded wife of the v. convict. Serious damage to life or property of the family of

the convict including damage caused by natural calamities. Sowing and harvesting of crops. vi. vii. To maintain family and social ties. viii. To pursue the filing of a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.

1209. Under-trial prisoners are not eligible for regular parole and furlough, however, may be released on custody Parole, that too by the order of the concerned trial court. It is clarified that where an appeal of a convict against conviction is pending before the High Court, regular parole will not be granted since the convict can seek appropriate orders from the High Court.

1210. In order to be eligible for release on parole in terms of Rule above:-

"I. A convict must have served at least the period of one year in prison excluding under-trial period and any period covered by remission. However, in exceptional cases, where the prisoner has spent more than 3 years as under trial period or half of the W.P.(CRL) 74/2019 page 3 of 8 sentence of the punishment awarded as under trial then his parole application may be considered, if he has spent at least 6 months in prison as convict. II. The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application. Delhi Prison Rules, 2018 333 III. During the period of release on parole or furlough, if granted earlier, the convict should not have committed any crime. IV. The convict should not have violated any terms and conditions of the parole or furlough granted previously. V. A minimum of six months ought to have elapsed from the date of surrender on the conclusion of the previous parole availed. In emergency, parole may be considered even if minimum period of six months has not elapsed from the date of termination of previous Parole. The emergency may include delivery of a child by the wife of the convict, death of a family member, marriage of children, terminal illness of family members and natural calamities.

1211. In the following cases, parole shall not be granted, except, if in the discretion of the competent authority special circumstances exist for grant of parole; W.P.(CRL) 74/2019 page 4 of 8 I. Prisoners convicted under sedition, terrorist activities and NDPS Act. II. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime. III. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be instigating serious violation of prison discipline as per the reports in his/ her annual good conduct report. IV. Convicted foreigners subject to prior approval of Ministry of Home Affairs & Ministry of External Affairs and having valid permission to stay in India. V. Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered, VI. If the prisoner is convicted of murder after rape; 334 Delhi Prison Rules, 2018 VII. If the prisoner is convicted under POCSO; VIII. If prisoner is convicted for multiple murders whether in single case or several cases. IX. If prisoner is convicted for Dacoity with murder. X. If prisoner is convicted for Murder after kidnapping for ransom. W.P.(CRL) 74/2019 page 5 of 8 XI. If the prisoner is convicted under Prevention of Corruption Act. XII. If the case is investigated by the Central Bureau of Investigation or Central Agency. 8. Learned Additional Standing Counsel for the State also presses Rule 1211 (I) stating that only in special circumstances can a convict of NDPS Act be granted parole.

9. The fact that the marriage of the petitioners granddaughter is to be performed and there is no one in the family besides the petitioners daughter i.e. the girls mother who would need help would certainly be special circumstance.

10. The first contention of learned Additional Standing Counsel for the State that once a major punishment has been provided within the last two years, the parole cannot be granted by this Court as well in exercise of its power under Article 226 of the Constitution of India deserves to be rejected.

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 W.P.(CRL) 74/2019 page 6 of 8 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) SCC437Dadu @ Tulsidas Vs. State of Maharashtra the Supreme Court dealing with the constitutional validity of Section 32(A) of the NDPS Act held:-

"the circumstances the writ petitions are 29. Under 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.

13. Considering the fact that the petitioners granddaughter is to get married which fact has been verified and a perusal of the nominal roll reveals that the petitioner was earlier being granted parole which concession she did not misuse, this Court deems it fit to grant parole to the petitioner. It is, therefore, directed that the petitioner be released on parole for a period of four weeks on her furnishing a personal bond in the sum of 25,000/- with W.P.(CRL) 74/2019 page 7 of 8 one surety bond of the like amount to the satisfaction of the Superintendent, Jail.

14. Petition is disposed of.

15. Order dasti. (MUKTA GUPTA) JUDGE JANUARY14 2019 mamta W.P.(CRL)
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