



\$~

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

%

Reserved on: 21.05.2024
Pronounced on: 30.05.2024

+ **W.P.(CRL) 963/2024 & CRL.M.A. 15576/2024**

SUNIL NAYAK @ FUNDI Petitioner

Through: Ms. Anushkaa Arora, Adv.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Rahul Tyagi, ASC for the State with Ms. Mansi Gosain, Mr. Mukesh Dagar, Mr. Naresh Dagar, Mr. Vivek Sharma, Ms. Soumya and Mr. Rohan Sharma, Advocates along with SI Manish Charan, P.S. Sarai Rohilla.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking grant of parole for a period of three months.

2. Issue notice. Mr. Rahul Tyagi, learned ASC accepts notice on behalf of State.



3. Brief facts of the case are that the petitioner herein was convicted in case arising out of FIR No. 289/2006, registered at Police Station Sarai Rohilla, Delhi, for offences punishable under Sections 302/34 of Indian Penal Code, 1860, and was awarded rigorous imprisonment for life by the learned Trial Court. The appeal against conviction i.e. *CRL.A. 957/2008* preferred by the petitioner was dismissed by this Court vide order dated 26.05.2009, and SLP against the said order also stands dismissed by the Hon'ble Apex Court.

4. As disclosed from the petition, the petitioner herein had earlier preferred *W.P.(CRL). 368/2024* and *vide* order dated 02.02.2024, this Court had directed the competent authority to treat the aforementioned writ petition as a representation and to decide the same within one week. It is submitted that since there was medical emergency in the family of petitioner, he had moved a fresh application for grant of parole, which was rejected by the competent authority *vide* order dated 28.02.2024.

5. Learned counsel for petitioner argues that the petitioner is in judicial custody for more almost 14 years, without remission. It is submitted that the same has been rejected in a mechanical manner, on the ground that punishments dated 16.06.2022 and 26.08.2022, awarded to the applicant/ petitioner were major punishments, and that while he was on emergency parole, he was re-arrested in a new case arising out of FIR bearing no. 509/2020, registered at Police Station Bharat Nagar for offences under Sections 25/54/59 of Arms Act. It is argued that the concerned authority has not taken into consideration



that the major punishments awarded are under challenge before this Court. It is further stated that the wife of the petitioner has met with a road accident and has suffered fracture and multiple injuries due to the same. It is also stated that she has undergone surgery, and since they have minor children, there is no one to look after his wife. Therefore, it stated that on humanitarian grounds, the petitioner be granted parole.

6. Learned ASC for the State, on the other hand, has opposed the grant of parole to the petitioner in view of punishment tickets awarded to him in the year 2022.

7. This Court has heard arguments on behalf of the petitioner and the State, and has perused the material placed on record.

8. As per nominal roll on record, the petitioner has remained in judicial custody for a period of about 14 years, excluding the period of remission of about 3 years. He has been working as factory *sahayak* in the jail and his conduct for last one year has been satisfactory.

9. The overall conduct of the petitioner has been reported as unsatisfactory, especially due to two major punishments awarded to the petitioner in the year 2022, which is also one of the grounds for passing of impugned rejection order. However, the said punishment tickets, dated 16.06.2022 and 26.08.2022, have been assailed before this Court by way of another writ petition i.e. W.P.(CRL.) 541/2024, which is pending adjudication.

10. The main ground for seeking grant of parole at this stage is that the wife of petitioner had recently met with an accident and suffered



some fractures and multiple injuries, and further that her health has been deteriorating day by day. It is further disclosed that the petitioner and his wife has only two minor children and there is no one else to look after and take care of his wife.

11. In view of the fact that the punishment tickets awarded to the petitioner are under consideration before this Court, and that the last punishment awarded to him was in the year 2022, i.e. about two years back, and taking into account the medical condition of the wife of petitioner, this Court is inclined to grant parole to the petitioner for a period of one month on the following terms and conditions:

- i. The petitioner shall furnish a personal bond in the sum of Rs.10,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
- ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM.
- iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
- iv. The petitioner shall ordinarily reside at the address mentioned in the petition, and he shall not leave NCT of Delhi during the period of parole.



- iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
 - v. The period of parole shall be counted from the day when the petitioner is released from jail.
12. Accordingly, the present petition stands disposed of.
 13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 30, 2024/at