

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

+ **W.P.(Crl.) No.1749/2009**

**Date or Order: January 11, 2010**

# SOMESH GUPTA ..... Petitioner  
! Through Mr.Sumeet Verma, Advocate.

versus

\$ STATE OF THE NCT OF DELHI ..... Respondent  
^ Through Mr.Akshay Bipin, ASC.

\* **CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

: **V.K. JAIN, J. (Oral)**

1. This is a petition under Section 482 of the Code of Criminal Procedure, for quashing the order dated 6.10.2009, whereby request of the petitioner for grant of parole for three months, in order to enable him to file a Special Leave Petition before the Hon'ble Supreme Court, against the judgment of this Court in Crl.A.No.23/2009, was rejected.

2. The petitioner was convicted for the offence punishable under Section 376(2)(g) of IPC and was sentenced to undergo imprisonment for twelve years. The appeal filed by him has been dismissed by this Court vide judgment dated 28.5.2009. The petitioner now intends to prefer Special Leave Petition before the Hon'ble Supreme Court against the judgment of this Court, dismissing the appeal filed by him.

3. In *Sunil Fulchand Shah vs. Union of India and others*, (2000) 3 SCC 409, a Constitutional Bench of the Hon'ble Supreme Court while considering parole under section 12(1) and 12(1)(A) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 observed that since the parole may be granted by the Government or its functionaries in accordance with Parole Rules and administrative instructions framed by the Government, which are administrative in character, a detenu has to approach the Government concerned or the Jail Authorities for securing release on parole. The Hon'ble Court, inter alia, held as under:-

“I must, however, add that the bar of judicial intervention to direct temporary release of a detenu would not affect the jurisdiction of the High Courts under Article 226 of the Constitution or of this Court under Article 32, 136 or 142 of the Constitution to direct the temporary release

of the detenu, where request of the detenu to be released on parole for a specified reason and/or for a specified period, has been, in the opinion of the Court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. That jurisdiction, however, has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court leaves it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu. “

4. In *Smt. Poonam Lata vs. M.L. Wadhawan and others*, 1987 Cri.L.J. 1130 the Hon'ble Supreme Court, inter alia, observed as under:

“Since the Act authorizes the appropriate Government to make an order of temporary release, invariably the detenu seeking to have the benefit of temporary relief must go to the appropriate Government first. It may be that in a given case the Court may be required to consider the propriety of an adverse order by the government in exercise of the jurisdiction under Section 12 of the Act. On the principle that exercise of administrative jurisdiction is open to judicial review by the superior court, the High Court under Article 226 or this Court under Article 32 may be called upon in a suitable case to examine the legality and propriety of the governmental action. There is no scope for entertaining an application for parole by the Court straightway. The legislative scheme, keeping the purpose of the statute and the manner of its fulfillment provided thereunder, would not justify entertaining of

an application for release of a detenu on parole“

5. In *Inder Singh vs. State*, AIR 1978 SC 1091, the petitioners, one of whom was aged 16 years and the other barely 20 years were convicted under section 302 of IPC. While maintaining their conviction the Hon'ble Supreme Court felt that humanizing influences must to be brought to bear upon them so that a better sense of responsibility, a kindlier attitude, behavioral maturity and values of a good life may be generated under controlled conditions. The Hon'ble Court directed that if the behavior of the petitioner showed responsibility and trustworthiness, liberal though cautious, parole be allowed to them so that their family ties may be maintained and inner tensions may not further build up and after every period of one year, they should be enlarged on parole for two months.

6. 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.

7. Since grant of parole is primarily a function assigned to the executive, it is for the Government, to consider the request made by a convict for grant of parole and pass appropriate orders on

it. If, however, it is shown that the order passed by the Government declining parole to the convict, is based upon grounds which are not relevant, or is otherwise wholly unsustainable before law, it is open to this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to set aside such an order and direct release of the convict on parole.

8. The appeal filed by the petitioner having been dismissed by this Court, Special Leave Petition before the Hon'ble Court is the last remedy available to him in law to prove the innocence he claims. Therefore, his anxiety to engage the best lawyer he can and to adequately brief him so as to enable him to present his case effectively before the Hon'ble Supreme Court needs to be understood and appreciated by the Government.

9. The impugned order would show that parole has been declined to the petitioner on the following grounds:-

1. As per police report address given by the convict could not be verified.
2. The convict can file SLP from jail itself, where free legal aid is available.

10. As regards the first ground, a perusal of the status report filed by SHO, New Ashok Nagar, would show that the address of the petitioner has since been verified and it has been found that

his mother Smt. Munni Devi, is staying at House No.218, Gali No.4, Near Pir Baba, behind CRPF Camp, Prashant Garden, Ghaziabad, U.P. along with his youngest son Kakesh. The house in which she is living is stated to be owned by her. Thus, the family of the petitioner has a fixed place of residence in Ghaziabad. Hence, the first ground on which parole has been declined to the petitioner is no more available in view of his address having been verified by the Police.

11. As regards the second ground, as noted earlier, Special Leave Petition before the Hon'ble Supreme Court being the last resort of the petitioner, if he wants to engage a private counsel of his choice. No fault can be found with such a decision. If the petitioner engages a lawyer of his choice and is able to brief him adequately, the lawyer would obviously be in a better position to place his case before the Hon'ble Apex Court effectively and to the satisfaction of the petitioner. The family members of the petitioners cannot be in a position to know all those facts, which are in his knowledge and therefore cannot be a substitute for him. Therefore, in my view, denial of parole on the ground that free legal aid being available in the jail, Special Leave Petition can be filed from the jail itself is not an appropriate ground and rejection of parole on such a ground without anything more

cannot be sustained. No other ground has been given by the respondent for denying parole to the petitioner.

12. For the reasons given in the preceding paragraphs, the impugned order dated 6.10.2009 is hereby set aside. The petitioner is directed to be released on parole, after one week from today, for a period of one month from the date of his release, subject to the conditions that: (i) he shall furnish a personal bond in the sum of Rs.10,000/- with one surety of like amount to the satisfaction of the trial court (ii) he shall remain only in Delhi and Ghaziabad during the period of parole and (iii) he shall mark his presence in Police Station New Ashok Nagar, Delhi, at 10:00 A.M., on every Sunday (iv) he shall submit copy of the Special Leave Petition filed by him before the Hon'ble Supreme Court before the SHO, Police Station Ashok Nagar within four weeks from the date of his release and (v) he shall comply with such other conditions as the respondent may impose, within one week from today, in order to ensure that he does not jump parole.

W.P.(CRL) 1749/2009 stands disposed of.

Dasti to both parties.

**V.K. JAIN  
(JUDGE)**

**JANUARY 11, 2010/'sn'/RS**