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

+ **W.P.(CRL) 1750/2009**

% Pronounced on: January 8, 2010

SURAJ Petitioner
! Through: Mr. Navin Chawla and Mr. Rakesh
Pandey, Advs.

versus

\$ STATE OF THE NCT OF DELHI Respondents
! Through: Mr. Amita Arora and Mr. Roshan Kumar
for Ms. Meera Bhatia, Addl. Standing Counsel.
IO/SI Sidappa P.S. Sabzi Mandi.

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

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? Yes

: V.K. JAIN, J. (ORAL)

1. This is a petition under Article 226 of the Constitution seeking quashing of the order dated 14th September 2009 whereby application of the petitioner for grant of parole, to enable him to file Special Leave Petition before the Hon'ble Supreme Court was declined by the respondent.

2. The petitioner was convicted under Section 307 of IPC in a case registered vide FIR No. 2/1993 at Police Station Sabzi Mandi. His appeal

against conviction having been dismissed by this Court on 11th February 2009, he intends to prefer Special Leave Petition before the Hon'ble Supreme Court against the order whereby his appeal was dismissed.

3. The request of the petitioner has been turned down vide order dated 14th September 2009, on the following grounds:-

- (i) Adverse police report regarding law & order problem.
- (ii) Apprehension of convict's jumping the parole.
- (iii) The convict can file SLP from jail itself, where free legal aid is available.

4. Grant of parole being an executive function, it is primarily for the government to consider such a request and pass appropriate orders on it. If, however, it is shown that the order passed by the Government, refusing parole, is based upon extraneous consideration or on the ground which are not relevant or germane, it is open to this Court in exercise of its jurisdiction under Article 226 of the Constitution to quash such an order and direct release of a convict on parole.

5. The appeal of the petitioner having been dismissed by this Court, Special Leave Petition before the Hon'ble Supreme Court is his last resort. His keenness to engage the best lawyer he can and to adequately brief him so as to enable him to effectively present his case before the Hon'ble Supreme Court cannot be disputed and need to be appreciated by Government as well.

6. The learned appearing for the respondent states that since the

complainant is residing in the same locality in which the petitioner was residing, there is an apprehension that he may try to intimidate harm. In my view, such an apprehension without there being any reasonable basis for it cannot be a valid ground for declining parole, particularly when not only the petitioner been already convicted even the appeal filed by him has been dismissed. If he didn't try to harm or intimidate the complainant during trial, he is unlikely to do it at this stage. Ordinarily, the convict would have no incentive for intimidating the complainant/injured once the witness has already been examined. In any case, suitable conditions can be imposed upon the petitioner to ensure that while on parole, he does not try to intimidate the injured or even approach him in any manner.

7. As regards the apprehension that the convict may jump parole, such a risk exists not only in case of parole, but also in a case where an under trial or a convict is released on bail, but, in the absence of circumstances or material justifying such an apprehension, it would not be proper to decline parole on this basis alone.

8. The third ground on which parole has been declined is that the convict can file the SLP from Jail itself, where free legal aid is available. As noted earlier, Special Leave Petition before the Hon'ble Supreme Court being the last remedy available to the petitioner, his anxiety to engage the best available Advocate which he can afford needs to be understood. If he wants to engage an Advocate of his choice, he must be given adequate opportunity for this purpose unless these are reasonable grounds justifying denial of such

an opportunity.

9. For the reasons given in the preceding paragraphs, the order dated 14th September 2009 passed by the respondent is quashed and the petitioner is directed to be released on parole, after one week from today, for a period of four weeks from the date of his release, subject to the following 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 trial court.
- (ii) The petitioner shall not try to intimidate or even interact with the injured either directly or indirectly.
- (iii) The petitioner shall maintain complete peace and harmony in the locality, while on parole.
- (iv) The petitioner shall comply with such other conditions as may be imposed by the respondent within seven days from today to ensure that he does not jump parole.

In case there is breach of any of the aforesaid conditions, it would be open to the police to arrest the petitioner and lodge him forthwith in the Jail to undergo the remaining portion of sentence awarded to him.

W.P.(CRL) 1750/2009 stands disposed of.

Dasti to both the parties.

JANUARY 08, 2010

Ag

V.K. JAIN,J