

via Video-conferencing

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

+ W.P. (CRL.) 1608/2020

PRADEEP @ SONU

.....Petitioner

Through: Mr. Akshay Bhandari, Advocate with
Mr. Digvijay Singh, Advocate.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: Mr. Chaitanya Gosain, Advocate for
Mr. Rahul Mehra, SSC (Criminal) for
the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **06.10.2020**

CrI. M.A. No.13750/2020 (exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P. (CrI.) 1608/2020

The petitioner, who is presently on parole granted *vidé* order dated 27.08.2020 made by the competent authority, having been released from prison on 08.09.2020, seeks extension of parole *inter alia* claiming parity with the extension granted to convicts who have availed such parole under orders of the court.

2. Mr. Akshay Bhandari, learned counsel for the petitioner submits that *vidé* orders dated 13.07.2020, 24.07.2020 and 24.08.2020

made by the Hon'ble Full Bench of this court in W.P.(C) No. 3037/2020 titled *Court on its own Motion vs. State & Ors.*, orders of interim bail, parole, furlough and emergency parole, all stand extended upto 31.10.2020 essentially on the basis that in view of the continuing coronavirus pandemic, allowing undertrials and convicts who have remained outside prison availing such court orders, to return to prison would pose a serious health risk to those confined in prison.

3. Mr. Bhandari submits that considering the very basis and reason for extension of orders of interim bail, parole, furlough and emergency parole by the Hon'ble Full Bench, convicts such as the petitioner, who were granted parole *not by court but by the jail administration*, meaning thereby whose cases merited grant of parole without need for approaching court, should not be put to a disadvantage; and the parole so granted should also be extended till 31.10.2020.

4. Mr. Bhandari places reliance *inter alia* on para 7 of order dated 13.07.2020 made by the Hon'ble Full Bench in the aforesaid matter, which reads as under:

*“7. In this regard, we make it clear that **all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court or the Courts subordinate to this Court, to other***

inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.”

(emphasis supplied)

5. Mr. Bhandari further submits that any distinction drawn between those who were granted parole *by court orders* and those who were granted parole *by orders of the jail administration* would be a facetious distinction and would be untenable in law on considerations of equity, fair-play and justice; apart from the fact that such interpretation would pose a huge health hazard to those returning to prison as also to inmates who are now in jail.

6. Issue notice.

7. Mr. Chaitanya Gosain, learned counsel appears on behalf of Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) for the State on advance copy; accepts notice; and submits that the State does not oppose the extension of the petitioner’s parole inasmuch as the benefit of extension granted by the Hon’ble Full Bench, which extension applies regardless of the date of grant of such order, must also apply regardless of whether such order was granted by court or by the jail administration. Mr. Gosain submits that any other interpretation would lead to an anomalous situation which would not be tenable in law.

8. While in the *suo moto* proceedings before it, the Hon’ble Full Bench was considering the extension of interim orders of bail, parole,

furlough and emergency parole granted by various courts, it is evident that the rationale for allowing such extension was the supervening consideration of preventing spread of the deadly coronavirus pandemic inside prison; and the urgent need for decongesting prisons *inter alia* in compliance with the directions of the Hon'ble Supreme Court in Suo Motu Petition (Civil) No. 1/2020 titled ***In Re: Contagion of COVID-19*** as also the recommendations made from time-to-time by the High Powered Committee of the Delhi High Court appointed pursuant to such directions.

9. This court is accordingly persuaded to accept the foregoing submissions inasmuch as, in the backdrop of the extraordinary situation of the raging coronavirus pandemic, the effort has to be to serve the purpose for which orders have been made by the Hon'ble Full Bench in the aforesaid matter; and whether a parole order was made by the court or by the jail administration, is irrelevant.

10. Furthermore, matters are escalated to this court by filing petitions only if a person is aggrieved by the action or inaction on the part of the jail administration; but, if an inmate gets relief from the jail administration, he should not be put to a disadvantage merely because there was no occasion for him to seek relief from this court or from any court subordinate to it.

11. It would be anathema to the concept of parity if a person is declined extension of an order of parole, furlough or emergency parole *merely* because he got that relief from the jail administration and not from the court. Such interpretation would defeat the very purpose and purport of the orders made by the Hon'ble Full Bench in

the above-referred matter from time-to-time. It may also be noticed that, as recorded in the various Minutes of Meetings of the High Powered Committee, several hundreds of inmates have been released by orders of parole, furlough and emergency parole made by the jail administration itself; and if such orders were deemed *not* to be extended by application of orders of the Hon'ble Full Bench, then the entire exercise of decongesting prisons, undertaken in compliance of directions of the Hon'ble Supreme Court, would be rendered futile.

12. In view of the foregoing, the parole granted to the petitioner *vidé* order dated 27.08.2020 stands extended by application and operation of the aforesaid orders of the Hon'ble Full Bench, upto 31.10.2020, on the same conditions as imposed earlier.

13. The writ petition stands disposed of.

14. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 06, 2020

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