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

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Reserved on: 06.05.2024
Pronounced on: 08.05.2024

+ **W.P.(CRL) 889/2024 & CRL.M.A. 13860/2024**

SONU SONKAR Petitioner

Through: Mr. Ansh Makkar and Mr.
Vaibhav Sinha, Advocates

versus

THE LT GOVERNOR, DELHI & ORS. Respondents

Through: Mr. Amol Sinha, ASC for the
State with Inspector Sanjeev
Kumar, P.S. Adarsh Nagar,
Mr. Kshitiz Garg, Mr. Ashvini
Kumar and Ms. Chavi
Lazarus, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. By way of the instant writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks setting aside of order dated 05.03.2024 *vide* which the application seeking grant of parole filed on behalf of petitioner was rejected by the respondents, and further seeks grant of parole for a period of four weeks to consummate his marriage with his wife Ms. T (*name not being disclosed in the judgment*) and for maintaining social ties.



2. During the pendency of the present writ petition, the petitioner herein also moved another application under Section 482 of the Cr.P.C. bearing no. CRL.M.A. 13860/2024 seeking release on interim parole for a period of two weeks till the disposal of the main writ petition.

FACTUAL MATRIX

3. The petitioner, who is presently confined in Jail No. 8/9, Tihar Jail, Delhi, was convicted under Sections 302/34 of the Indian Penal Code, 1860 (*IPC*) *vide* judgment dated 15.11.2011 by the learned Trial Court and was sentenced to undergo rigorous imprisonment for life and payment of fine of Rs. 5,000/-. The Criminal Appeal No. 1590/2011 filed against the said judgment was dismissed by this Court on 23.03.2012. As per the nominal roll, the petitioner herein has not challenged the judgment of this Court dated 23.03.2012 in the Hon'ble Apex Court by filing SLP.

4. The case set out by the petitioner is that he has remained in judicial custody for about 16 years 10 months, excluding remission of about 02 years and 09 months. It is further his case that he was married to one Ms. T on 10.01.2021, and has completed three years of marriage. It is averred that the petitioner has not been able to consummate his marriage with his wife Ms. T, since the petitioner herein was in judicial custody. It is stated that Ms. T had applied for the release of the present petitioner on parole on this ground itself before the jail authorities on 02.01.2024, the copy of which has been annexed with the main writ petition. It is also stated that Ms. T being



the *Pairokar* of the petitioner herein has filed along with the main writ petition, her Aadhaar Card, and the rent agreement dated 07.04.2022 where she is staying at present and that the petitioner will also stay with her at the same address.

SUBMISSIONS ON BEHALF OF THE PETITIONER AND THE STATE

5. **Learned counsel for the petitioner** argues that the petitioner's wife Ms. T has expressed her intent to start a family with the petitioner as Ms. T has been deprived of her right to have progeny, even though she has not committed any offence. It is further argued that denial to have conjugal relationship with his wife will adversely affect the rights of his wife. It is also stated that denying parole to the petitioner will also adversely affect his ability to maintain social ties. It is further submitted that the petitioner had been released on 11.09.2019 from judicial custody on the recommendation of the Hon'ble Lt. Governor, GNCTD vide order No. F.18/ 102/ 2003-Home (G)/PT-2019/5240-5266, however, he was re-arrested in a fresh case i.e. FIR bearing No. 539/2021, registered for offences under Sections 307/34 of IPC at Police Station Sabzi Mandi, Delhi, while he was out of custody, pursuant to recommendation of Hon'ble Lt. Governor, GNCTD. It is, however, stated that the petitioner has been granted bail in the said case.

6. **Learned counsel for the petitioner** further argues that the petitioner has been granted parole and furlough on several occasions in the past, and he has never misused the liberty granted to him and



has always surrendered on time before the jail authorities. It is stated that the petitioner was granted parole for a period of 10 days on 20.07.2023, wherein this Court had taken note of the fact that the *pairokar* in this case is the wife of the petitioner and the Court had granted parole to him to take care of her since she has no one else to take care of her. It is stated that the conduct of the petitioner in the prison has been satisfactory. It is also argued on behalf of the petitioner that the Courts have, on multiple occasions, granted parole on grounds of maintaining social ties and preserving conjugal and family relationships in similar cases wherein the accused who have been granted parole and furlough have not misused the liberty so granted. It is, thus, stated that the petitioner be granted parole for a period of four weeks for the purpose of consummating his marriage with his wife and for maintaining social ties.

7. It is also submitted that the petitioner herein has filed an application for grant of interim parole for a period of two weeks, pending decision in the main petition on the ground that his wife Ms. T is suffering from a medical problem since 02.03.2024 which is related to her uterus, and has been advised surgery, which is fixed for 02.05.2024. It is further stated that his wife Ms. T requires the present petitioner to attend to her and he also has to arrange for money for the treatment of his wife. It is pointed out that the other two writ petitions bearing no. 2931/2023 and 1661/2023, filed by the petitioner seeking different reliefs, are pending before this Court and are listed on 15.07.2024.



8. **Learned ASC for the State**, on the other hand, opposes the present writ petition and submits that the present petition has been filed on false and frivolous grounds as Ms. T is not the wife of the petitioner. It is further stated that as per the Status Report, the petitioner is already married to one Ms. A (*name not being disclosed in the judgment*) and that the petitioner has not been legally separated till date from his first wife Ms. A. Thus, granting parole to the petitioner on the ground that he has to consummate with his alleged wife Ms. T should not be allowed by this Court. Further, it is submitted that the averments made in the application for the release of the petitioner on interim parole till the pendency of the present writ petition should also be rejected straightaway on the same ground that Ms. T, who claims to be the petitioner's second wife, is not the legally wedded wife of the petitioner herein and during enquiry, she could not produce any document to show that she is the wife of present petitioner. Therefore, it is prayed that the present petition along with the interim application be dismissed.

9. This Court has heard arguments addressed by learned counsel for the petitioner and learned ASC for the State, and has perused the material placed on record.

ISSUES BEFORE THIS COURT

10. Having gone through and perused the records of the case, this Court is of the view that the issues, which arise for consideration and adjudication in the present case, are as under:



(i) Whether the petitioner is guilty of concealment of facts and not approaching the Courts with clean hands?

(ii) Whether a 'live-in partner' will be covered under the definition of 'family' as provided under Rule 1201 of Delhi Prison Rules, 2018 for the purpose of grant of parole?

(iii) Whether a convict is entitled to grant of parole on the ground of maintaining conjugal rights and procreation with his 'live-in partner', when he already has a legally wedded wife?

ANALYSIS OF THE RECORD

i. Impugned Rejection Order

11. The order dated 05.03.2024 passed by the respondent, by virtue of which the application filed on behalf of the petitioner seeking parole was rejected, is extracted hereunder for reference:

“The convict is not entitled for parole in view of **Rule 1210 sub rule (II), (IV) and (V) of Delhi Prison Rules 2018**, which states that -

Rule 1210 sub rule (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”. In this case, as per nominal roll, the above said convict has been awarded punishment dated 11.04.2023 and per Rule 1271 of Delhi Prison Rules 2018 (warned by SCJ).

1210 sub rule (IV):- “The convict should not have violated any terms and conditions of the parole or furlough granted previously”. In this case, the aforesaid



convict had jumped the parole on 24.11.2012 and re-arrested on 13.12.2012. He was also released on Interim Bail on 29.07.2022 and directed to surrender on 18.08.2022 side order dated 04.08,2022 in case FIR No. 539/2021 but not surrender on time and jumped the same and re-arrested on 01.03.2023.

1210 sub rule (V):- “A minimum of six months might to have elapsed from the date of surrender on the conclusion of the pervious parole availed. In emergency, parole may to considered even if minimum period of six months has not elapsed from the date of termination of the previous parole. The emergency may include delivery of the child by the wife of the convict, death of a family member, marriage of children, terminal illness of family members and natural calamities”. In this case, the above said convict was released on 10 days parole w.e.f. 04.08.2023 to 14.08.2023 granted by the granted by the Hon’ble Court of Delhi and the same was extended till 18.08.2023 but surrendered on 21.08.2023 (late by 02 days).

2. The above said convict was released from the jail on 11.09.2019 in the above said case FIR by the Hon’ble Lt. Governor, GNCTD vide order no, I ,18/102/2003- Home (G)/PT-1/2019/5240-5266 dated 09.09.2019 on the recommendation of Sentence Review Board but he was re-arrested in another case FIR No. 539/2021 U/s 307/34 IPC. PS- Subzi Mandi, as he had violated the terms and conditions of premature release, thereafter Hon’ble Lt. Governor, GNCT of Delhi had cancelled the remittance of sentence of said convict and he is presently serving his unexpired portion of sentence in the above said case.

3. Further, as per nominal roll, two other cases are also pending against the said convict.”

ii. Parole & Furlough Granted to the Petitioner Between 2012 to 2019

12. The Nominal Roll filed on record reveals that the petitioner has been released on more than 20 occasions in the past on either parole



or furlough, by both the jail/competent authorities and by this Court.

The record of the same is reproduced hereunder:

Parole:-

1. W.e.f. 23.10.2012 to 23.11.2012 for 01 Months.(Jumped and re-arrested on 13.12.2012)
2. W.e.f. 01.02.2014 to 01.03.2014 for 01 Months granted by DHC.
3. W.e.f. 25.11.2014 to 23.12.2014 for 04 weeks granted by DHC.
4. W.e.f. 13.07.2016 to 12.08.2016 for 30 days granted by GNCT.
5. W.e.f. 13.04.2017 to 11.05.2017 for 04 weeks granted by GNCT.
6. W.e.f. 31.07.2017 to 31.08.2017 for 01 Months granted by DHC, which was extended Up to 26.09.2017.
7. W.e.f. 07.05.2018 to 21.05.2018 for 02 weeks by GNCT, which was extended for 04 weeks by DHC.
8. W.e.f. 10.08.2018 to 10.09.2018 for 01 Months granted by DHC.
9. W.e.f. 20.09.2018 to 20.10.2018 for 01 months granted by DHC.
10. W.e.f. 20.03.2019 to 03.04.2019 for 02 weeks granted by DHC.
11. W.e.f. 04.08.2023 to 14.08.2023 for 10 days granted by DHC, which was extended till 18.08.2023 but surrendered on 21.08.2023, i.e. 02 days late.

Furlough:-

1. W.e.f. 30.03.2016 to 20.04.2016 for 03 weeks granted by DG(P).
2. W.e.f. 04.06.2016 to 18.06.2016 for 02 weeks granted by DG(P).
3. W.e.f. 17.10.2016 to 31.10.2016 for 02 weeks granted by DG(P).
4. W.e.f. 08.12.2016 to 29.12.2016 for 03 weeks granted by DG(P).
5. W.e.f. 02.03.2017 to 16.03.2017 for 02 weeks granted by DG(P).
6. W.e.f. 15.05.2017 to 29.05.2017 for 02 weeks granted by DG(P).
7. W.e.f. 30.11.2017 to 21.12.2017 for 03 weeks granted by DG(P)
8. W.e.f. 16.02.2018 to 02.03.2018 for 02 weeks granted by DG(P)
9. W.e.f. 18.04.2018 to 02.05.2018 for 02 weeks granted by DG(P)
10. W.e.f. 05.12.2018 to 26.12.2018 for 03 weeks granted by DG(P)
11. W.e.f. 30.01.2019 to 13.02.2019 for 02 weeks granted by DG(P)
12. W.e.f. 29.06.2019 to 14.07.2019 for 02 weeks granted by DG(P)

13. Till the year 2019, the record reveals that the petitioner had sought parole/furlough from this Court on various occasions, *inter alia* on medical grounds, as well as grounds of illness, treatment and/or surgery of his **wife** i.e. **Ms. A**. It is pertinent to mention some of the writ petitions filed by the petitioner herein, and the grounds on



which the parole had been sought by him. These are summarized hereunder:

Case No.	Ground for seeking Parole
W.P.(CRL.) 1275/2012	Parole, for filing of SLP [Note: the Nominal Roll reflects that no SLP has been filed by the petitioner]
W.P.(CRL.) 1648/2017	Parole, for taking care of his ailing wife
W.P.(CRL.) 2007/2017	Parole, for taking care of wife who was seven months' pregnant and seriously ill
W.P.(CRL.) 2380/2017	Extension of Parole, for taking care of his pregnant wife.
W.P.(CRL.) 1572/2018	Parole, for treatment of abnormal lymphs in his neck.
W.P.(CRL.)1948/2018	Parole, for treatment of abnormal lymph in his neck as well as Tuberculosis.
W.P.(CRL.) 2733/2018	Parole, for wife's surgery for removal of fibroids from ovary.
W.P. (CRL.) 3321/2018	Parole, for wife's surgery for removal of fibroids from ovary.
W.P.(CRL.) 720/2019	Parole, for wife's surgery.



14. It is to be noted carefully that in the above-mentioned writ petitions, wherein the petitioner had sought parole on the grounds of illness of his wife, the **name of the wife** as mentioned in the petition and also in the medical treatment records annexed with these petitions, was **Ms. A**.

iii. Release of Petitioner by Sentence Review Board and His Re-arrest

15. At this juncture, this Court also takes note of the fact that the petitioner herein was released from prison on 11.09.2019, on the recommendation of Sentence Review Board.

16. However, he was again re-arrested on 01.03.2023 since his remittance of sentence had been cancelled by Hon'ble Lt. Governor, GNCTD *vide* order No. F.18/39/2022/HG/2693 dated 24.09.2022 considering the fact that the petitioner had allegedly committed another offence for which an FIR bearing no. 539/2021 had been registered at Police Station Subzi Mandi, Delhi for offences punishable under Sections 307/34 of the IPC, and thus, had violated the terms and conditions of premature release. Since then, the petitioner has been in judicial custody.

iv. Writ Petitions Filed for Grant of Parole After Petitioner's Re-Arrest

17. The petitioner had filed a petition i.e. **W.P.(CRL.) 1879/2023**, seeking parole for a period of one month on the grounds of the surgery of his ailing wife and to conduct religious rites/rituals on the



death anniversary of the ‘unborn child’ of the petitioner. The prayer of the said Writ Petition is extracted hereunder:

“1. Parole for one month for surgery of his ailing wife and to arrange funds for her treatment and to conduct rites on the death anniversary of the child of the petitioner in FIR No.484/2003 ; U/S.:302/34 IPC ;P.S.: Adarsh Nagar.

2. Any other Order(s) that this Hon“ble Court may deem fit in the interest of justice.”

18. **Interestingly**, the name of the petitioner’s wife in this petition was mentioned as **Ms. T**, whereas, on previous occasions i.e. till the year 2019, the petitioner had sought parole for the purpose of treatment/surgery of his wife **Ms. A**. In the said petition, he was granted parole for a period of 10 days vide order dated 20.07.2023.

19. In the present petition also i.e., **W.P. (CRL) 889/2024**, the petitioner mentions Ms. T as his wife, whom he had married on 10.01.2021. However, in the application seeking grant of interim parole pending decision in the main petition, the petitioner mentions in para no. 3 of the application that **Ms. T is his second wife/live-in-partner**.

CONTRADICTORY STANDS AND CONCEALMENT OF FACTS ON PART OF PETITIONER

20. For a better understanding of the true facts, this Court has gone through the entire contents of the previous writ petition preferred by the petitioner i.e. W.P. (CRL.) 1879/2023, wherein the petitioner had sought parole for a period of one month on the ground of the surgery of his ailing wife Ms. T and to conduct religious rites/rituals on the



death anniversary of the unborn/still born child of the petitioner and Ms. T.

21. The Status Report filed by the State in the above-mentioned petition reveals that the statement of Ms. A had been recorded by the police, in which, she had clearly mentioned that she did not know anything about Ms. T, and no lady in the name of Ms. T was residing at the address of Malka Ganj, Delhi-07, as claimed by the petitioner, and in fact, it was Ms. A who was residing at the said address with her three children, born out of her wedlock with the petitioner. The police had thereafter contacted Ms. T, on the contact number which had been mentioned in the petition, and Ms. T had given her statement that she was the second wife of the petitioner, and though she had been residing earlier with the first wife of petitioner i.e. Ms. A at the petitioner's house, but she had left the said house after she had a quarrel with Ms. A, and was now residing with her friend at Shahdara, Delhi. Further, she had to undergo a surgery at Parmarth Mission Hospital, Shakti Nagar, Delhi on 24.07.2023. However, Ms. T could not produce any document regarding her marriage with Mr. Sonkar i.e. the present petitioner.

22. **What shocks the conscience of this Court** is the fact that the petitioner herein had sought, and was granted, parole from the Co-ordinate Bench in W.P. (CRL.) 1879/2023 on the ground of surgery of his wife Ms. T, wherein he had not disclosed the fact that Ms. T was not his wife, but is his live-in-partner. He had also not disclosed that he had already been married to Ms. A and had three children with her, though the name of Ms. A had been disclosed by him in his



earlier petitions filed prior to the year 2023, i.e. between the period 2012 to 2019.

23. Coming to the present case i.e. W.P. (CRL.) 889/2024, the petitioner has again not disclosed in the petition that he is already married to Ms. A, and has three children. The same has also not been disclosed by him in the interim application, but it is for the first time that he has admitted in the said application that Ms. T is his second wife/live-in partner, and not his legally wedded partner.

24. A perusal of the latest Status Report filed by the State further reveals that the first wife of petitioner Ms. A is residing in Malka Ganj, Delhi-07 along with her three children, born from her union with the petitioner, and they are not separated legally till date. Further, Ms. T who is claiming herself as the second wife of the petitioner could not produce any documentary proof for the same. It was also revealed that Ms. T is presently residing in Shastri Nagar, Delhi in a rented accommodation with one Sh. Rinku Gupta, who she claims to be her father. It was also revealed during enquiry that Sh. Rinku Gupta is not the real father of Ms. T, but he treats her as his daughter only.

25. Therefore, this Court is of the firm view that the petitioner herein has not come to this Court with clean hands, as he did not reveal in the main writ petition that Ms. T is not his wife, but second wife/live-in partner. It was also not revealed to this Court that the petitioner has not separated legally from his first wife Ms. A, with whom he has three children.



WHETHER THE DELHI PRISON RULES INCLUDE ‘LIVE-IN PARTNER’ WITHIN THE MEANING OF ‘FAMILY MEMBER’ FOR THE PURPOSE OF GRANT OF PAROLE?

26. As an interim relief, during the pendency of main writ petition, the petitioner has sought parole on the ground of illness of his ‘second wife/live-in partner’ i.e. Ms. T. Thus, this Court deems it appropriate to also analyze this relief from the lens of Delhi Prison Rules, 2018, to examine as to whether the rules, which provide for granting parole to a convict in case of any family member suffering from serious illness, would also include granting such relief in cases of live-in partners.

*i. **Grant of Parole: Relevant Prison Rules***

27. Rule 1200 of the Delhi Prison Rules, 2018 lists out the objectives of granting parole or furlough to a prisoner. The said Rule reads as under:

“1200. The objectives of releasing a prisoner on parole and furlough are:

- i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self confidence,
- iii. To enable him to develop constructive hope and active interest in life,
- iv. To help him remain in touch with the developments in the outside world,
- v. To help him remain physiologically and psychologically healthy,
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and



vii. To motivate him to maintain good conduct and discipline in the prison.”

28. Rule 1203 provides the reasons for which custody parole can be granted to a prisoner, and the same reads as under:

“1203. “Custody Parole” may be granted to the convict by an order in writing, issued by the Superintendent Prison and to the under trial prisoners by the trial court concerned, for a period of not more than six hours, excluding the time taken to reach the destination and return to Prison, in the following eventualities:

- i. Death of a family member;
- ii. Marriage of a family member;
- iii. Serious illness of a family member or
- iv. Any other emergency circumstances with the approval of DIG (Range) of prisons.

Note: The prisoners who have been convicted by the trial court may avail custody parole from prison authorities though their appeals are pending before the higher courts.”

29. Rule 1208 further provides the grounds on which the competent authority can consider applications for parole:

“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. Serious illness of a family member.
- ii. Critical conditions in the family on account of accident 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 convict.
- v. Serious damage to life or property of the family of the convict including damage caused by natural calamities.



- vi. Sowing and harvesting of crops.
- 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.”

30. A perusal of the aforesaid Rules would reflect that prisoners are provided with the benefit of parole, *primarily* to extend them an opportunity to maintain family and social ties, or in cases of exigencies such as serious illness of a family member, death of a family member, marriage in the family, delivery of child by wife of convict, etc. Thus, the term ‘family’ assumes great importance for the purpose of grant of parole under the Delhi Prison Rules.

31. The definition of ‘**family**’ is provided under Rule 1201 of the Delhi Prison Rules, which is as under:

“1201. The definition of a family of a prisoner for this chapter means grandparents, parents, brothers, sisters, spouse, children and grandchildren.”

32. Therefore, the family of a prisoner would include his or her grandparents, parents, brothers, sisters, spouse, children and grandchildren, for whose illness, death, marriage, etc. can a prisoner seek parole under the Delhi Prison Rules.

ii. Whether a Live-In Partner will be covered under Definition of ‘Family’ under Delhi Prison Rules?

33. In this case, the parole is being sought by the petitioner on the grounds of consummating his marriage and having conjugal relations



with his wife Ms. T. The records reveal that there is no document on record to show that (i) the petitioner has legally separated from his first wife Ms. A, and that (ii) the petitioner has solemnized marriage with Ms. T. In fact, the petitioner has himself mentioned Ms. T as his ‘second wife/live-in partner’.

34. As far as the Delhi Prison Rules, 2018 are concerned, the word ‘spouse’ as mentioned in Rule 1201 would imply only a legally wedded husband or a wife, being its strict and precise interpretation, and it would exclude any live-in partner from its ambit since a live-in partner cannot fall under the definition of ‘spouse’. Similarly, a second husband or wife in case *where such a marriage would be illegal/invalid/void/impermissible in law* cannot also be included within the ambit of ‘spouse’.

35. Thus, the live-in partner of the petitioner herein, who lacks legal recognition as a ‘wife’ or a ‘spouse’, cannot be held to fall within the scope of the definition of ‘family’ under Delhi Prison Rules.

36. Therefore, though the Delhi Prisons Rules recognize the illness of a family member as a ground for considering application for parole, such ‘family member’ would not include the petitioner’s live-in partner, who as per the interim application filed in this case, is ill and requires treatment.



WHETHER A CONVICT IS ENTITLED TO PAROLE FOR MAINTAINING CONJUGAL RIGHTS OR PROCREATION WITH HIS 'LIVE-IN PARTNER' WHEN HE ALREADY HAS A LEGALLY WEDDED WIFE?

37. In the main writ petition, the petitioner has sought grant of parole for the purpose of consummation of marriage, maintaining conjugal relationship and for the purpose of procreation, with his second wife/live-in partner Ms. T. It also appears that the petitioner has used the terms 'consummation', 'conjugal relationship', and 'procreation' interchangeably, there is no doubt that the meaning of these terms are quite different.

38. As far as 'consummation' of marriage is concerned, the petitioner herein had mentioned in W.P. (CRL.) 1879/2023 that Ms. T was pregnant in the year 2022, however, their child had unfortunately died in the womb of Ms. T. Therefore, the petitioner today cannot seek parole for the purpose of consummation of marriage, which already stands consummated as per the submissions of petitioner himself.

39. It would be also pertinent to note that the law, as it stands enacted today, does not permit grant of parole on the ground of maintaining 'conjugal relationship' even with one's legally wedded wife, let alone a live-in partner.

40. The counsel for the petitioner had referred to the judgment authored by this Bench in case of *Kundan Singh v. State (NCT of Delhi)*, 2023 SCC OnLine Del 8364 : (2024) 307 DLT 61 : (2024) 1 RCR (Cri) 510 to emphasize that in this case, this Court had



permitted the convict to be released on parole for the purpose of ‘procreation’ and had held that the right to procreate comes within the ambit of Article 21 of Indian Constitution.

41. This Court, however, is of the view that the facts of the case of *Kundan Singh (supra)* and the present case are entirely different, and each case has to be adjudged on the basis of its own facts and peculiar circumstances. In the said judgment itself, this Court had observed as under:

“The right to procreation is not absolute and necessitates a contextual examination. By taking into account factors such as the prisoner's parental status and age, a fair and just approach can be adopted to preserve the delicate equilibrium between individual rights and broader societal considerations. It is essential to recognize that the right to procreate is inherently linked to the notion that every individual has the right to extend their lineage. However, this right is not without its nuances, and its exercise is subject to various considerations. If the inmate already has children, this dynamic aspect of the right may be considered fulfilled.”

42. The above-extracted paragraph of the decision in case of *Kundan Singh (supra)* clarifies that the right to procreation, which is covered under Article 21 of the Constitution of India, cannot be termed as an absolute right. It was also observed that various factors including the parental status of the prisoner at the time of moving such application, his age and age of his/her spouse are also to be considered while considering grant of parole on the ground of procreation. It cannot be lost sight of that in that case, the age, the fact that the prisoner had no child and that a child was to be born with the aid of IVF, were the primary factors for granting parole.



43. This Court, therefore, can draw a clear distinction between the case cited before it, and the facts of the present case.

44. In the case at hand, the petitioner already has a legally wedded wife i.e., Ms. A, has been blessed with three children born from his wedlock with Ms. A. Thus, the present case does not fall within the ratio of *Kundan Singh (supra)*, as in that case, parole was granted for the purpose of procreation with one's legally wedded wife, *whereas* the petitioner herein is seeking parole for the purpose of maintaining conjugal relationship and for procreation with his 'second wife/live-in partner' even though he has a legally wedded wife and three children born out of that wedlock. Furthermore, the law in India as well as the Delhi Prison Rules do not permit grant of parole on the ground of maintaining conjugal relationships, that too with live-in partners.

45. In other words, a live-in-partner, when the legally wedded wife of the convict is already alive and they already have three children, cannot claim to have a fundamental right to have a child from her live-in-partner who is a convict, within the parameters of law and prison rules.

46. Moreover, in this Court's opinion, granting parole on the ground to have a child or to maintain conjugal relationships with a live-in partner, where the convict already has a legally wedded wife and children born out of that wedlock, would set a harmful precedent. In case parole is granted on such grounds, it will open a flood gate of such petitions where many convicts may seek parole on the ground that they have a live-in partner apart from their legally wedded



partner or in case of an unmarried convict, a live-in partner who may want to have a child with the convict. In this Court's opinion, this cannot be permitted within the parameters of existing law as well as the relevant rules for grant of parole under the Delhi Prison Rules, 2018.

CONCLUSION

47. **This Court would make it clear that it is neither authorized nor it wishes to comment on any person's personal life or choices and the relationships that he as an adult maintains with his wife or adult partner.** The present writ petition, needless to say, has to be decided within the framework of the law as it stands enacted at present, including the Delhi Prison Rules, 2018, which are relevant for the purpose of adjudicating the instant petition.

48. **This Court does not mix or confuse law with general or individual morality or moral beliefs or conduct of two individuals which in the opinion of this Court are the individual choices of two adults.** This kind of relationship also cannot come under the scanner of the Courts who have no business to interfere in the personal lives of two adults without there being any criminal complaint against them. However, when this kind of relationship is brought before the Court and the parties seek refuge and relief under the existing law, the Court without being swayed by its own morality or the general morality of the society has to decide it purely on the basis of the existing laws and prison rules.



i. Mr. Sonkar's Story: Summarized

49. The petitioner Mr. Sonkar was married to Ms. A, when he was convicted and sentenced for commission of offence under Section 302/34 of IPC in the present case. As per the record, Mr. Sonkar was blessed with three children from his wedlock with Ms. A. After his conviction was confirmed by this Court in the year 2012, he had sought and had been granted parole on several occasions between the year 2012 to 2019 on grounds of illness, surgery etc. of his wife Ms. A.

50. Mr. Sonkar was released from jail on 11.09.2019 by the Hon'ble Lt. Governor, GNCTD *vide* order dated 09.09.2019 on the recommendation of the Sentence Review Board.

51. At this point, while Mr. Sonkar was out from jail, he had allegedly married Ms. T on 10.01.2021, however, there is no proof of the said marriage. Similarly, there is also no proof of his divorce from Ms. A, who continues to live as wife of Mr. Sonkar at the address of Malka Ganj, Delhi provided by Mr. Sonkar since the year 2012.

52. Mr. Sonkar was implicated in another case under Section 307/34 of IPC in the year 2021. Since he had violated the terms and conditions of the premature release, the Hon'ble Lt. Governor, GNCTD had cancelled the remittance of sentence of Mr. Sonkar *vide* an order dated 24.09.2022, and he was re-arrested on 01.03.2023.

53. In the meantime, Ms. T had given birth to a still born child in July 2022. Mr. Sonkar filed W.P. (CRL.) 1879/2023 wherein one of



the grounds for seeking parole was carrying out some “rituals on the death anniversary of his unborn child”. As per statement of Ms. T recorded by the police on 07.07.2023, she had given birth to a still born child. Mr. Sonkar in the pleadings of W.P. (CRL.) 1879/2023 did not disclose that Ms. T is not his legally wedded wife or that she was his second wife/live-in partner.

54. In the present petition i.e., W.P. (CRL.) 889/2024, interestingly, Mr. Sonkar has sought parole on ground of “consummation of marriage” with Ms. T, totally oblivious or forgetful of the fact that he had already sought and was granted parole on ground of surgery of Ms. T in W.P. (CRL.) 1879/2023 wherein he had disclosed the factum of a still born child being born to Ms. T out of his alleged marriage with Ms. T. Thus, going by the said submission, the alleged marriage between Mr. Sonkar and Ms. T already stood consummated.

55. Mr. Sonkar did not realize that the legal records created in the Courts in digitized form are not destroyed and can be perused by a Court of law even if the same are old, as in the present case, of the year 2012. To unearth the actual story of Mr. Sonkar, this Court had called for the entire record of the petitions filed by Mr. Sonkar for grant of parole since the year 2012, and has perused the pleadings, the Status Reports, and the orders passed therein.

56. The digital footprints of the legal record revealed the truth of the story. One of it being that the question of consummation of marriage with Ms. T does not arise since she was already pregnant and had given birth to a still born child born out of her alleged



wedlock with Mr. Sonkar, as per the statement dated 07.07.2023 of Ms. T recorded by the police and Mr. Sonkar's claim in his pleadings in W.P. (CRL.) 1879/2023. Mr. Sonkar in the present petition, in one of the paragraphs, changes his stand and states that he has to "resume conjugal relationship" with Ms. T since she desires to have a child being his wife, which is her fundamental right.

57. Therefore, Mr. Sonkar's acts of referring to Ms. T as her wife in W.P. (CRL.) 1879/2023 and in the present petition i.e. W.P. (CRL.) 889/2024, as his 'second wife/live-in partner' in the present interim application, seeking parole for 'consummation of marriage' with Ms. T, for 'resumption of conjugal relationship' with Ms. T, a still born child being born to Ms. T, not disclosing the factum of his legally wedded wife Ms. A and three children being alive in the present writ petition, brought forward the self-contradictory stands of the petitioner, thereby persuading this Court to dig the facts further from the previous Court records so as to nail the truth.

ii. The Decision

58. For the reasons which have been recorded in the preceding paragraphs, this Court is inclined to hold as under:

- a. The conduct of Mr. Sonkar i.e. the petitioner has been discussed in detail in the preceding paragraph. He has misrepresented and misguided the Courts through his pleadings in several writ petitions, wherein he did not disclose the fact that Ms. T is his live-in-partner, and not his legally wedded wife. Moreover, the record reveals that the



petitioner is in fact married to Ms. A, from whom he has three children, and it is also not the case of petitioner that he has divorced his first wife Ms. A, and all these facts also have not been disclosed by the petitioner before this Court by Mr. Sonkar.

- b.** Though illness of a family member is one of the major grounds for grant of parole to a convict, when analyzed from the perspective of Delhi Prison Rules, 2018, this Court is of the view that Ms. T, the ‘second wife or live-in partner’ of petitioner Mr. Sonkar, who is not her legally wedded wife, cannot be included within the meaning of term ‘spouse’ and consequently within the definition of ‘family’ under Rule 1201 of Delhi Prison Rules, 2018. Even otherwise, as per medical record filed alongwith the present petition, the tentative date of surgery of Ms. T has been fixed as 08.05.2024 whereas it is mentioned in the petition that the surgery is fixed for 02.05.2024.
- c.** Mr. Sonkar is not entitled to grant of parole, on grounds of procreation or maintaining conjugal relationships with his second wife/live-in partner, when he already has a legally wedded wife, as well as three children born out of that wedlock.

59. Thus, considering the aforesaid facts and circumstances of the case, this Court does not find it a fit case for grant of parole to the present petitioner.



60. Accordingly, the present petition along with pending application stands dismissed.

61. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 8, 2024/zp