



2025:DHC:9143



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.10.2025*+ **W.P.(CRL) 2924/2025**

SUNIL SHARMA

.....Petitioner

Through: Mr. Laksh Khanna with Ms.
Diksha Suri, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC
for the State with SI Sonu
Siwach PS Punjabi Bagh**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner has approached this Court seeking grant of parole for a period of two months, for the purpose of filing Special Leave Petition (SLP) before the Hon'ble Supreme Court to challenge his conviction in case arising out of FIR bearing no. 732/16, registered at Police Station Punjabi Bagh, Delhi for the commission of offence punishable under Sections 354/354B/511/376/506 of the Indian Penal Code, 1860 [hereafter 'IPC'] and Sections 10/18/6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act'].



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2. The petitioner is presently confined in Central Jail No. 2, Tihar, Delhi, as he has been convicted in the aforementioned case *vide* judgment dated 11.01.2024 by the learned Additional & Sessions Judge-01 (West), Tis Hazari Courts, Delhi [hereafter '*Trial Court*'] and has been sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs. 1,00,000/-, and in default of payment of same, to undergo simple imprisonment for a period of 150 days, for commission of offence punishable under Sections 506/511/354/354B of IPC and Sections 10/18 of POCSO Act. Aggrieved by his conviction, the petitioner had preferred an appeal (CRL.A. 427/2024) before this Court but the same came to be dismissed *vide* judgment dated 11.11.2024.

3. The case set out by the petitioner is that he had applied for grant of parole before the Competent Authority on 15.01.2025 for the purpose of arranging financial resources for engaging a counsel to file an SLP before the Hon'ble Supreme Court and also for re-establishing social ties with his family; however, his application was rejected *vide* order dated 23.04.2025. Aggrieved therefrom, the petitioner had approached this Court by way of W.P.(CRL.) 1021/2025, and the Coordinate Bench *vide* order dated 16.05.2025 had found the order passed by the Competent Authority unsustainable in law and had directed the State/Competent Authority to consider the petitioner's application afresh.

4. Thereafter, the petitioner had filed a fresh application for parole on 20.05.2025. The same however was not decided till filing



of present petition in September, 2025.

5. The learned counsel appearing for the petitioner argues that the petitioner has already undergone actual incarceration of about 1 year and 08 months, without remission. It is argued that the petitioner seeks parole as he desires to engage a counsel for filing an SLP before the Hon'ble Supreme Court to assail the judgment dated 11.11.2024 *vide* which his appeal against conviction has been dismissed by this Court. In this regard, it is contended that *vide* order dated 16.05.2025 passed by the Coordinate Bench, the competent authority had been directed to decide his application for parole afresh within a period of four weeks, and the petitioner had moved a fresh application on 20.05.2025, but to no avail as the his application was not decided for over three months. Reliance in this regard is further placed on Rule 1213(8)(x) of Delhi Prison Rules, 2018 [hereafter '*Prison Rules*'] to argue that if no report is received by the Superintendent of Jail within four weeks, then it is to be presumed that the police authorities have no objection to parole being granted. It is also argued that the Competent Authority, during pendency of this petition, has again arbitrarily rejected his application for parole on the same grounds. Additionally, it is argued that the petitioner has clean antecedents, no punishment has been awarded to him in jail, and his jail conduct has been satisfactory, as evident from the Nominal Roll. Thus, it is prayed that the present petition be allowed.

6. The learned ASC appearing for the State, on the other hand, opposes the plea, arguing that the offence committed by the petitioner



is grave in nature and that his release on parole may pose a danger to society. It is contended that since the petitioner belongs to economically weaker section, he can avail the legal aid facilities available inside the prison to file his SLP before the Hon'ble Supreme Court. Thus, it is prayed that the present petition be not allowed.

7. This Court has **heard** arguments addressed by the learned counsel appearing for either side, and has perused the material available on record.

8. In the present case, the petitioner is seeking grant of parole to enable him to file an SLP before the Hon'ble Supreme Court, by engaging a counsel of his choice, so as to challenge the judgment dated 11.11.2024 passed by this Court *vide* which his appeal against conviction was dismissed; and also for re-establishing social ties on account of continuous long incarceration.

9. In this regard, as noted above, the petitioner had first filed his application for parole on 15.01.2025 which was forwarded to the Competent Authority. The said application was however rejected *vide* order dated 23.04.2025 *inter alia* on the ground that the petitioner had been convicted under the POCSO Act and thus, the embargo under Rule 1211(vii) of the Prison Rules stood attracted against him. Further, it had also been opined that the petitioner's release may be prejudicial to society, as he may indulge in criminal activities. It was further opined that since the petitioner belonged to an economically



weak family, he can file SLP through a counsel of the Legal Aid Cell present inside the jail. The order dated 23.04.2025 is reproduced below:

“1. As per Rule 1211 sub rule (vii) of Delhi Prison Rule-2018, which provide that:- “In the following cases, parole shall not be granted, except if in the discretion of the competent authority special circumstances exist for grant of parole;

(VII). If the prisoner is convicted under POCSO. In this case, the aforesaid convict was held guilty under POCSO Act and has taking grounds to file SLP and to re-establish social ties. Further, Delhi Prisons vide proposal has been stated that in the statement before the police, his uncle, Achchhela confirmed that he lives in Jhuggi and parents of convict have already expired. He himself works as barber. The family members of convict live in a village in Allahabad. All the circumstances show that the convict belongs to economically weak family and he can file his SLP through legal add cell, present in jail. Hence, the parole for filing SLP may not be recommended.

2. Further, Police Authority in its report has stated that convict may not be granted parole as his release may be dangerous to society and there is every possibility of contacting his associates and indulging in criminal activities during release period. He may also cause breach of peace in society and there is strong possibility that convict may take advantage of parole. It will be very tough for law enforcement agencies to trace him out.”

10. Aggrieved therefrom, the petitioner had approached this Court, and the Coordinate Bench *vide* order dated 16.05.2025 had expressed that the order rejecting petitioner’s application for parole reflected non-application of mind as it proceeded on a mechanical interpretation of Rule 1211(vii), and the Competent Authority ought to have examined if “special circumstances” permitting a grant of parole existed in the favour of the petitioner or not. It was also noted in the order. It was further observed specifically by the Coordinate



Bench that this Court in another case had expressed that filing of an SLP is a ‘special circumstance’. The Competent Authority was thus directed to decide the petitioner’s parole application afresh within a period of four weeks. The relevant observations of the Coordinate Bench in order dated 16.05.2025 are extracted hereunder:

“3. The Coordinate Bench of this Court in W.P. (CRL) 480/2022, in similar circumstances, had categorically held that the bar under Rule 1211 is not absolute and the discretion is vested with the respondent authorities to give benefit of parole if special circumstances exist even in cases of prisoners who were convicted under POCSO. This Court also held that filing of an SLP is, in fact, a special circumstance and granted the benefit of furlough to the petitioner therein.

4. Despite the judgment passed by this Court, yet again, the application seeking parole has been rejected on the ground that the petitioner is convicted under the POCSO. The order rejecting the application is without application of the mind. The same, in the opinion of this Court, could not have been passed on the ground that the petitioner has been convicted under POCSO since the parole had been sought in order to enable the petitioner to file an SLP, which, as held by the Coordinate Bench of this Court, is a special circumstance.”

11. At this juncture, it is necessary to take note of Rule 1211(vii) of Prison Rules, which provides as under:

“1211. In the following cases, parole shall not be granted, except, if in the discretion of the competent authority special circumstances exist for grant of parole;

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VII. If the prisoner is convicted under POCSO;”

12. The petitioner, pursuant to the order dated 16.05.2025, had filed a fresh application for parole on 20.05.2025; however, evidently, it did not fructify as the same was not decided within four



weeks as directed by this Court *vide* order dated 16.05.2025, and was kept pending for about four months.

13. During the pendency of the present petition, on 15.09.2025, the Competent Authority finally decided the petitioner's application for parole and rejected the same. The order reads as under:

"1. As per Rule 1211 sub rule (vii) of Delhi Prison Rule-2018, which provide that:- "In the following cases, parole shall not be granted, except if in the discretion of the competent authority special circumstances exist for grant of parole;

(VII). If the prisoner is convicted under POCSO. In this case, the aforesaid convict was held guilty under POCSO Act.

2. As per record, and in light of the provisions under Chapter XVI of the Delhi Prison Rules, 2018, adequate legal aid facilities are available to prisoners within the prison premises, including access to the Legal Aid Cell, through which filing of SLPs and other remedies can be effectively pursued. Thus, physical release on parole is not a pressing necessity for this purpose.

3. The Hon'ble High Court, in its order dated 16.05.2025, observed that the bar under Rule 1211 of the Delhi Prison Rules, 2018, is not absolute, and that filing of an SLP constitutes a "special circumstance" warranting consideration for parole. With utmost respect to the observations of the Hon'ble Court, the following points merit consideration:

(a) The legislative intent behind Rule 1211 is to safeguard society from convicts found guilty of heinous offences, particularly under POCSO, where release of such convicts is likely to cause fear and insecurity in the community.

(b) As per Chapter XVI of the Delhi Prison Rules, 2018, prisoners can avail legal aid facilities for filing SLPs, and therefore release on parole is not required solely for this purpose. This includes the National Legal Services Authority (NALSA) constituted under the Legal Services Authority Act, 1987, chaired by Senior Most Judge of the Hon'ble Supreme Court to administer and monitor the legal service programs related to Supreme Court of India.

(c) The parole applicant has been convicted of a grave offence under POCSO. His release on parole, even for a limited period, would pose a potential danger to society and may adversely affect public confidence in



the justice system.

(d) The Delhi Police has strongly opposed the grant of parole in this case.”

14. *Notably*, the premise for rejection for parole is essentially same as before – a mechanical reliance on Rule 1211(vii) of the Prison Rules to hold that the petitioner was convicted under the POCSO Act and thus he is disentitled to claim parole on ground of their being no ‘special circumstances’, coupled with the fact that adequate legal aid facilities are available inside the Prison which can be availed by the petitioner to file SLP before the Hon’ble Supreme Court. Therefore, materially, the reasoning in the rejection order dated 15.09.2025 mirrors the previous rejection order dated 23.04.2025.

15. However, in the considered opinion of this Court, the rejection order dated 15.09.2025 is clearly arbitrary and untenable, for the reasons recorded hereinbelow. Firstly, the Competent Authority has ignored that various Benches of this Court have held that embargo under Rule 1211(vii) of the Prison Rules is not absolute, and that any decision on a parole application concerning the said provision has to be preceded by a thoughtful exercise of discretion vested with the Competent Authority to examine the “special circumstances” to grant parole. The Coordinate Bench, in decision dated 16.05.2025, also specifically referred to the order passed in ***Rakesh v. State NCT of Delhi***: 2022 SCC OnLine Del 1346, wherein it had been held as under:

“8. As regards the observation that filing of SLP constitutes no “special circumstance” as there is free legal aid available,



suffice it to note that the courts have not agreed with this stance of the Government. Under Article 22(1) of the Constitution as well as Section 303 Cr.P.C., an accused person has been guaranteed with a Constitutional right to engage a counsel/pleader of his own choice. It is no doubt true that the Legal Services Authorities at all levels endeavour to provide excellent legal assistance to those in prison. But, to deny the convict an opportunity to engage with other counsel to enable him to make up his mind freely, as to whom he would wish to engage, would violate his constitutional rights to legal representation. In fact, it is because of the recognition of this right that the State Prison Rules, 2018 dealing with parole and furlough, recognizes that regular parole under Rule 1208 can be granted to a convict, to pursue filing of a Special Leave Petition before the Supreme Court.

9. While this ground in the impugned order does not hold water, the more serious objection is encapsulated in ground (1), namely, that the Rules itself do not permit a prisoner convicted under POCSO Act for parole. It would be useful to reproduce Rule 1211 for ready reference, as below: -

“1211. In the following cases, parole shall not be granted, except, if in the discretion of the competent authority special circumstances exist for grant of parole;

I. to VI. xxx xxx

VII. If the prisoner is convicted under POCSO;”

10. But this bar is not absolute, for, the competent authority has been vested with “discretion” even in such cases, to grant parole, provided there were special circumstances. It is clear that the impugned order does not refer to the “special circumstances” that were required to be considered and were found insufficient to grant parole. Rather, it is clear that the “special circumstances” or rather their absence, have been referred to only in respect of the filing of an SLP, but not for the entitlement of the applicant for parole under Rule 1211(VII) of the State Prison Rules.

11. To reiterate, a convict under the POCSO Act is not barred from seeking parole, as discretion has been vested in the competent authority to grant parole to such a convict under “special circumstances”. What those “special circumstances” would be have not been spelt out. Nevertheless, it is clear that the facts of each case would reveal the “special circumstances”



for grant of parole. The competent authority should keep in mind the purpose of parole as listed out in Rule 1200 of the Prison Rules.....”

16. Similarly, this Bench in case of *Neeraj Bhatt v. The State (Govt. of NCT) of Delhi*: 2023 SCC OnLine Del 32, while granting parole to a prisoner, convicted for commission of offence under POCSO Act, for the purpose of filing of SLP before the Hon’ble Supreme Court, had observed as under:

“7. The bar in the said rule is not absolute since the competent authority has the discretion, even in such cases, to grant parole, provided there exist special circumstances. **Though the special circumstances were to be considered by the competent authority, the impugned order does not refer to the special circumstances and that they were found insufficient for grant of parole, rather it only mentions that the SLP can be filed from the jail itself and that the conduct of the applicant was not satisfactory.**

8. In this Court's opinion, the right of a citizen to avail a legal remedy in the final court of country, which may often be the last ray of hope, cannot be denied on such ground.

9. As per Rule 1211 of Delhi Prison Rule, 2018, it clearly mentions that parole in the circumstances mentioned in the said Rule can be granted in the discretion of the competent authority if special circumstances exist for grant of parole. The ground taken by the petitioner for grant of parole in the present case is filing of SLP against the judgment of the High Court in Criminal Appeal No. 391/2020 which was decided on 04.07.2022 whereby the judgment of conviction dated 05.12.2019 and order on sentence dated 19.12.2019 were upheld. **It is the right of a citizen to effectively pursue his legal remedy in the last court of justice in the county by filing SLP through a counsel of his own choice which is a valuable right. This cannot be withheld merely on the basis of his past conduct or on the ground that free legal aid is available and that SLP can be filed from the jail itself. Needless to say, availing his legal remedy in the Apex Court**



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of the country is the right of the petitioner and this Court is not inclined to withdraw the same.”

(Emphasis added)

17. However, the Competent Authority, despite clear observations of this Court in various decisions as well as specific directions of the Coordinate Bench in order dated 16.05.2025 – that filing of SLP ought to be considered a ‘special circumstance’ – has chosen not to grant parole to the petitioner, again on the same ground of embargo under Rule 1211(vii) and availability of legal aid facilities in prison, much like in the previous rejection order.

18. It is also apparent that the Competent Authority has casually weighed the petitioner’s right to file an SLP and engage a counsel of his choice, by stating that the same does not necessitate the petitioner to be released on parole and the same can be filed by availing the legal aid facilities inside the prison. However, this line of reasoning again falls afoul of the consistent judicial opinion that the right to file an SLP before the Hon’ble Supreme Court is an invaluable judicial remedy of a convict-prisoner, which is the convict’s last ray of hope. Specifically, in ***Bijender@Vishnu v. State of NCT of Delhi: 2024 DHC 118***, it was held as under:

“9. This Court notes that Rule 1208 of the Delhi Prison Rules, 2018, provides the following grounds on which an application filed by the prisoner can be considered by the competent authority:

“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...**

10. Thus, Rule 1208 provides filing of SLP before the Hon'ble Apex Court as one of the grounds for seeking grant of parole. Rule 1210 prescribes criteria to be eligible for release on parole and as revealed from records, the present petitioner fulfills the said criteria. Thereafter, Rule 1211 also provides that in certain cases as mentioned in the said rule, the competent authority will grant parole only in cases of special circumstances, and perusal of the same reveals that the case of petitioner herein also does not fall within the parameters of said rule.

11. The Courts have time and again held that the right of a convict to file SLP before the Hon'ble Apex Court, challenging his conviction and incarceration, is a valuable right which should not be denied. This Bench in *Neeraj Bhatt v. State (NCT of Delhi)* 2023 SCC OnLine Del 32 had observed as under:

“9. ...It is the right of a citizen to effectively pursue his legal remedy in the last court of justice in the country by filing SLP through a counsel of his own choice which is a valuable right. This cannot be withheld merely on the basis of his past conduct or on the ground that free legal aid is available and that SLP can be filed from the jail itself. Needless to say, availing his legal remedy in the Apex Court of the country is the right of the petitioner and this Court is not inclined to withdraw the same.”



12. Similarly, it was observed by this Bench in **Ved Yadav v. State (NCT of Delhi)** 2023 SCC OnLine Del 1261 that:

“9. It has been time and again held by Courts that right of a convict to file an SLP against dismissal of his criminal appeal by a High Court is an essential one, and the same cannot be denied on the ground that free legal aid is available in the jail and SLP can be filed from the jail itself. Since the only hope for petitioner would now be from the Hon'ble Apex Court as far as his conviction is concerned, he must be provided with an opportunity to pursue his legal remedy by filing SLP through the counsel of his choice.”

19. Therefore, when viewed against this backdrop, the repeated observations by the Competent Authority that adequate legal aid facilities are available inside the prison are unmerited. Clearly, as already held in several decisions, the availability of legal aid facilities inside the prison cannot be made a ground to deny the petitioner a chance to engage a counsel of his choice for the crucial purpose of filing an SLP before the Hon'ble Supreme Court, to a convict facing incarceration for commission of offence under POCSO Act merely on the ground that filing of SLP is not a 'special circumstance' as provided under Rule 1211 of Prison Rules. The impugned rejection order, on this ground itself, is liable to be set aside.

20. Another concerning aspect in the present case is that, despite the categorical observations made by the Coordinate Bench in its order dated 16.05.2025 with respect to the earlier rejection order dated 23.04.2025 passed by the Competent Authority, and despite a clear direction to reconsider the petitioner's application afresh, the Competent Authority has once again passed an identical order. This



has been done while expressly disregarding the directions and observations of this Court, thus, carrying out a rote exercise of power. In ***Mohd. Sheikh Noor Hussain v. State NCT of Delhi***: 2025 SCC OnLine Del 2563, the Coordinate Bench of this Court, in reference to rejecting parole/furlough application of a convict-prisoner repeatedly on same grounds, held as under:

“10. Once, the Court has specifically observed that this is not a valid ground for denying Parole, the insistence to persist in making this as a ground of rejection of Parole every time compelling the Petitioner to come to the Court, is neither warranted nor appreciated. The Jail administration must be conscious and aware of the Orders being made by the Court and follow them scrupulously.

12. ...Merely because he is confined to jail, does not reduce his status to that of a chattel, bereft of any basic Fundamental Human Rights. It is high time that the Jail Authorities demonstrate a little more sensitivity in dealing with such matters.

14. It is hereby directed that while considering the Parole/Furlough Applications, the same ground should not be repeatedly reiterated for rejection of Parole/Furlough Application. Once a judicial mind has been disclosed in any Order about the validity of any ground for Rejection or Non-Rejection of the Parole/Furlough Application, the same should be more judiciously and scrupulously adhered to by the Jail Authorities.”

21. In the present case, the action of the Competent Authority in reiterating the same grounds of rejection in order dated 15.09.2025, despite specific directions of the Coordinate Bench in decision dated 16.05.2025 to reconsider the matter afresh by taking note of the fact that filing of SLP would amount to a ‘special circumstance’,



demonstrates clear non-application of mind as well as disregard towards the observations and directions of this Court by the Competent Authority.

22. Be that as it may, at this juncture, this Court notes that it is evident from the Nominal Roll of the petitioner that he has been working as a Washing Plant Sahayak inside the jail, and his overall conduct in the jail has been reported as satisfactory. Moreover, the petitioner neither has any previous criminal involvement, nor any punishment, major or minor, has ever been awarded to him inside the jail. Furthermore, this Court is conscious of the fact that the petitioner has remained incarcerated for about 1 year and 08 months. The address of the petitioner in Delhi, A-423, Indra Colony, Punjabi Bagh, Delhi, where he undertakes to reside if released on parole, also stands verified by the State.

23. Therefore, in view of the foregoing circumstances, the present petition is allowed. The petitioner is accordingly granted parole for a period of one month, 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 concerned Jail Superintendent.
- ii. The petitioner shall report to the SHO of the local area, once a week on every Sunday between 10:00-11:00 AM and shall not leave the National Capital Territory of Delhi during the period of parole.



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- iii. The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.
 - iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
 - v. The petitioner shall furnish a copy of the SLP filed before the Hon'ble Supreme Court to the Jail Superintendent at the time of surrendering.
 - vi. The period of parole shall be counted from the day when the petitioner is released from jail.
24. The petition is disposed of in above terms.
25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

OCTOBER 13, 2025/vc