

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

+ **W.P.(Crl.) No.1826/2009**

% Date of Order 11th February, 2010

CHINTU MALHOTRA Appellant
! Through: Mr.Ashutosh Gupta, Adv.

versus

\$ STATE 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? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

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

1. This is a petition under Article 226/227 of the Constitution of India, challenging the order passed by the respondent on 19.11.2009, thereby rejecting the request of the petitioner for grant of parole.

2. The petitioner was convicted under Section 364 and 302 of IPC read with Section 34 thereof, vide judgment and the appeal

filed dismissed by the Division Bench on 11.5.2009. The petitioner applied to the Government for grant of parole on the ground that he wanted to file Special Leave Petition before the Hon'ble Supreme Court, against dismissal of his appeal by this Court. The request of the petitioner for grant of parole was rejected on the following grounds:-

1. Adverse police report, i.e., parents of the convict don't have control over his activities, who is of criminal nature.
2. The convict can file SLP from Jail itself, where free legal aid is available.
3. Since grant of parole is essentially an executive function, it is for the Government to consider the request of a convict for grant of parole and take appropriate decision on it. If, however, it is shown that parole has been denied by the Government on the grounds which are not relevant or for extraneous reasons, 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 the convict on parole.
4. A perusal of the status report filed by the respondent shows that the father of the petitioner is aged 56 years whereas his mother is aged 54 years. The father is selling vegetables as a hawker. The petitioner is stated to be unmarried. I fail to appreciate on what basis the Government comes to the

conclusion that the parents of the petitioner cannot have any control over his activities. In any case, suitable directions can be given to ensure that while on parole, the petitioner does not indulge in any unlawful activities. The address of the petitioner where his parents are presently residing stands verified. Therefore, in my view, it was not open to the respondent to deny parole on the flimsy ground that parents of the petitioner do not have control over his activities.

5. As regards the second ground on which parole has been denied to the petitioner, I find no merit in it. The appeal filed by the petitioner having been dismissed by a Division Bench of this Court, the Special Leave Petition before the Hon'ble Supreme Court is his last resort and the only remedy available to him in law to prove the innocence which he claims. Hence, his anxiety to engage the best lawyer he can, and to brief him adequately in order to enable him to present his case before the Hon'ble Supreme Court effectively and to his complete satisfaction is quite understandable.

6. For the reasons given in the preceding paragraphs, the impugned order dated 11.5.2009 thereby rejecting the request of the petitioner for grant of parole is hereby set aside and 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 following conditions:-

- i. He shall furnish a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the trial court.
- ii. He shall not go out of Delhi during the period he remains on parole.
- iii. He shall supply a copy of the Special Leave Petition filed by him to the concerned SHO within four weeks from the date of his release.
- iv. He shall mark his presence in Police Station Uttam Nagar at 10:00 A.M. on every Sunday.
- v. He shall not indulge into any unlawful activities, while on parole.
- vi. He shall comply with such other conditions as the Government may decide to impose within one week from today, in order to ensure that he does not escape, while on parole.

W.P.(Crl) No. 1826/2009 stands disposed of.

V.K. JAIN,J

FEBRUARY 11, 2010
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