

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

+ **W.P.(CRL) 1807/2009**

% Date of Order : 07th January, 2010

VIMAL KUMAR BAHL Petitioner
Through: Mr. Sunil Mehta, Adv.
versus

THE STATE (N.C.T.OF DELHI) & OTHERS Respondent
Through: Ms. Meera Bhatia, ASC with Ms.
Amita Arora and Mr. Roshan, Mr. Satish
Aggarwala, Adv. for R-2

* **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)**

This is a petition for grant of parole in order to enable the petitioner to file a Special Leave Petition before the Hon'ble Supreme Court. The petitioner was convicted in a Sessions Case No.59/2001 registered under Section 21 of NDPS Act read with Section 29 thereof. The appeal filed by him has been dismissed by this Court vide judgment dated 5th November, 2009 though the period of sentence has been reduced from 16 years to 13 years. Since the appeal filed by the petitioner has been dismissed, he now wants to approach the Hon'ble Supreme Court by way of a Special Leave Petition.

W.P. (Crl.) No. 1807/2009

Page 1 of 4

2. The petitioner filed Writ Petition No.1724/2009 before this Court for grant of parole. Vide order dated 2nd December, 2009, this Court directed the respondent to expedite disposal of the parole application filed by the petitioner.

3. The parole has been refused to the petitioner on the following two grounds:

- i. The convict has availed interim bail in the current year w.e.f 14.10.2009 to 03.11.2009 by the order of Hon'ble Delhi High Court.
- ii. There are other family members who can look after his mother very well and also arrange the filing of SLP.

4. Grant of parole being an executive function, it is for the Government and not for the Court to consider the request made by a convict for grant of parole and pass appropriate orders on it. If, however, the order passed by the Government is found to be based on extraneous reasons or is on the grounds which are not relevant, or is otherwise unsustainable in law, being unjust or improper, it is open to the Court, in appropriate cases, to quash such an order and direct release on parole.

5. As regards the first ground, since interim bail has no bearing on the request for grant of parole for the purpose of filing Special Lave Petition against dismissal of the appeal, it was not open to the respondent to reject parole on the ground that an interim bail was granted to the petitioner from 14.10.2009 to 03.11.2009. His appeal before this Court was still pending at that

W.P. (Crl.) No. 1807/2009 ***Page 2 of 4***

time, and therefore, there was no occasion for him to even consider filing of a Special Leave Petition before the Hon'ble Supreme Court at that stage.

6. The other ground given by the respondent for denying parole to the petitioner is that there are other family members who can arrange filing of a Special Leave Petition. The family members can never be a substitute in the matter of briefing the counsel, particularly in a serious matter where the accused has been sentenced to imprisonment for a period of 13 years. Hence, the respondent was not justified in denying parole on the ground that there are other members in the family of the petitioner who can arrange filing of Special Leave Petition on his behalf.

7. The appeal filed by the petitioner having been dismissed by this Court, Special Leave Petition before the Hon'ble Supreme Court is his last resort. Therefore, his anxiety to engage the best lawyer he can and to brief him adequately so as to enable him to present his case effectively before the Hon'ble Supreme Court cannot be said to be unjustified and should have been appreciated by the Competent Authority.

8. For the reasons given in the preceding paragraphs, the order passed by the respondent denying parole to the petitioner cannot be sustained. The order is hereby quashed and the petitioner is directed to be released on parole, after one week, for a period of one month from the date of his release, subject to the conditions that (i) he shall furnish a personal bond in
W.P. (Crl.) No. 1807/2009

the sum of Rs.10,000/- with one surety of like amount to the satisfaction of Trial Court; (ii) he shall not leave Delhi during the period of parole and shall live only in 285-D, Pocket-II, Mayur Vihar, Delhi which is stated to be the residence of his sister-in-law; (iii) he shall comply with such other conditions as respondent No.1 may impose upon him, within one week from today, in order to ensure that he does not jump parole.

W.P.(CRL) 1807/2009 stands disposed of with these directions.

Dasti.

(V.K.JAIN)
JUDGE

JANUARY 07, 2010

bg