

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Writ Petition (Criminal) No.235/2018

MOHAMMED SHAMSUDDIN

Appellant(s)

Versus

THE STATE OF RAJASTHAN & ORS.

Respondents

O R D E R

Heard learned counsel for the parties.

Ms. Madhvi Divan, learned Additional Solicitor General relied on the decision of this Court in *Asfaq vs. State of Rajasthan & Other*, (2017) 15 SCC 55. She further invited our attention to paragraph No.31 of said judgment by which request for parole was rejected by this Court.

Mr. Ratnakar Dash, learned Senior Counsel on the other hand, relied upon subsequent Order dated 14.05.2018 passed by this Court in the matter of very same person-Asfaq, which order granted him parole for 21 days on the ground that his mother had expired. Mr. Dash invited our attention to order dated 06.08.2018 passed by this Court in Writ Petition(Criminal) No.158/2018 (*Mohammed Amin vs. State of Rajasthan & Ors.*) in connection with another co-accused from the same trial who was also granted parole for 21 days.

In the present case, the petitioner has completed more than 24 years of actual custody and has never been released on parole. However, during the pendency of the trial, under the orders of this Court, the petitioner was transferred from Central Prison, Jaipur to Central Jail, Gulbarga for some period.

We may at this stage quote the observations of this Court in para 17 of its judgment in *Asfaq vs. State of Rajasthan* (supra) which are:-

"17. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, *albeit* for (*sic* short) periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest."

Considering the facts and circumstances of the case and more particularly the fact that the petitioner is in custody for more than 24 years, we pass following directions:

(a) The petitioner who is presently lodged in Central Jail, Jaipur shall be transferred to Gulbarga Central Prison. Such transfer shall be effected within next ten days. The petitioner shall continue to be lodged in Gulbarga Central Prison till further orders by this Court.

(b) Within five days of such transfer, the petitioner shall be released on parole for a period of 21 days subject to the condition that he shall report to the Chowk police station, Super Market, Gulbarga everyday between 10.30 A.M. to 12.00 Noon.

(c) While on parole, the petitioner shall remain in Gulbarga and shall not go out of Gulbarga.

(d) On completion of 21 days of parole, the petitioner shall surrender himself with the concerned Police Station, namely, Chowk P.S., Gulbarga who shall then lodge the petitioner back in the Central Prison, Gulbarga.

(e) This parole is granted so that the petitioner can maintain his relations with family. The facility of parole shall not be misused in any manner for being in communication with either the co-accused or persons involved in the crime.

(f) Any infraction or violation of this order will entail serious consequences.

Copies of this order shall immediately be sent to Central Jail, Jaipur & Gulbarga Central Prison as well as Chowk Police Station, Gulbarga for strict compliance.

List this Writ Petition for further orders on 27.02.2019.

.....J.
(UDAY UMESH LALIT)

.....J.
(K.M. JOSEPH)

New Delhi;
January 17, 2019.

ITEM NO.7

COURT NO.9

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No.235/2018

MOHAMMED SHAMSUDDIN

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN & ORS.

Respondent(s)

(FOR ADMISSION and IA No.129746/2018-EXEMPTION FROM FILING O.T.)

WITH

W.P. (Cr1.) No.250/2018 (X)

(FOR ADMISSION and IA No.133800/2018-EXEMPTION FROM FILING O.T.)

W.P. (Cr1.) No.284/2018 (X)

(FOR ADMISSION and IA No.150933/2018-EXEMPTION FROM FILING O.T.)

Date : 17-01-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Ratnakar Dash, Sr. Adv.
Mohd. Irshad Hanif, AOR

For Respondent(s) Ms. Ruchi Kohli, AOR
Ms. Srishti Mishra, Adv.

Ms. Madhavi Divan, ASG
Mr. Rana Mukherjee, Sr. Adv.
Mr. Rajiv Nanda, Adv.
Ms. Manjula Gupta, Adv.
Mr. B. V. Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

Writ Petition (Criminal) No.235/2018

The order which was reserved yesterday has been pronounced by Hon'ble Mr. Justice Uday Umesh Lalit for the Bench comprising His Lordship and Hon'ble Mr. Justice K.M. Joseph.

The relevant portion of the order reads as under:

"(a) The petitioner who is presently lodged in Central Jail, Jaipur shall be transferred to Gulbarga Central Prison. Such transfer shall be effected within next ten days. The petitioner shall continue to be lodged in Gulbarga Central Prison till further orders by this Court.

(b) Within five days of such transfer, the petitioner shall be released on parole for a period of 21 days subject to the condition that he shall report to the Chowk police station, Super Market, Gulbarga everyday between 10.30 A.M. to 12.00 Noon.

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(e) This parole is granted so that the petitioner can maintain his relations with family. The facility of parole shall not be misused in any manner for being in communication with either the co-accused or persons involved in the crime.

(f) Any infraction or violation of this order will entail serious consequences."

Copies of this order shall immediately be sent to Central Jail, Jaipur & Gulbarga Central Prison as well as Chowk Police Station, Gulbarga for strict compliance.

List this Writ Petition for further orders on 27.02.2019.

W.P. (CRL.) NOS.250/2018 & 284/2018

List these matters on 21.01.2019.

(MUKESH KUMAR)
COURT MASTER

(VIDYA NEGI)
BRANCH OFFICER

(Signed Order is placed on the File)