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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.REF. 5/2019

COURT ON ITS OWN MOTION ..... Petitioner  
Through:

versus

STATE ..... Respondent  
Through: Mr. Rahul Mehra, Standing Counsel  
Criminal.  
Mr. Mayank Tripathi, Advocate and  
Mr. Akash Godhvani, Advocate for the  
accused.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN  
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER  
20.01.2020

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1. Present Criminal Reference under Section 395(2) Cr.P.C., has been received from Special Judge, (PC Act) (ACB-01), Rouse Avenue District Courts, Delhi raising the following issues: -

- "Q.1 If an accused is in custody in more than one case and the concerned trial courts are more than one, then whether the accused is required to obtain custody parole from each and every concerned court or the accused can move to any one court of his choice for seeking custody parole?"*
- Q.2 Maximum duration in which the custody parole can be granted to an under-trial?"*
- Q.3 In case custody parole application is moved to only one of the concerned court then whether*



any permission is required from the other concerned courts before sending the under-trial on custody parole?

Q.4 In case, permission is not required from the other concerned courts, then whether the Jail Superintendent or accused should give intimation to the other concerned courts regarding sending the under-trial on the custody parole?"

2. Having regard to the scope of the reference, it is necessary to analyze the statutory scheme for grant of custody parole to the undertrial.

Question no.2.

3. At the outset, we deem it appropriate to reproduce Rule 1209 of the Delhi Prison Rules 2018, which reads as under:

*"1209. Under-trial prisoners are not eligible for regular parole and furlough, however, may be released on custody Parole, that too by the order of the concerned trial court. It is clarified that where an appeal of a convict against conviction is pending before the High Court, regular parole will not be granted since the convict can seek appropriate orders from the High Court."*

4. At the same time, Rule 1203 of the Delhi Prison Rules, 2018 deals with the custody parole, which 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."*

5. Further, in *Election Commission of India vs Mukhtar Ansari*, reported in 2017 SCC online Del 7199, it has been held that custody parole cannot be a substitute for grant of bail and cannot be extended for long periods or for daily visits. Germane portion of the judgment is extracted below:

*"32. After a person is arrested and produced before the Court, thereafter he is in the custody of Court i.e. 'custodia legis'. Even the Superintendent, Jail or the Police Officer taking to and for the prisoner to the Court holds the custody of the prisoner on behalf of the Court. By the impugned order no bail has been granted to the respondent No.1 and the respondent No.1 was directed to be in the custody of the Court to be held by the officers of State as directed. The custody of the prisoner away from the prison or the Court to any other place cannot be shifted except for a short period and only to meet emergent situations like death in the family, or to go to hospital or marriage of a child or sibling etc. The same cannot extend for long periods and for daily visits and cannot be substitute of a grant of bail. By passing the impugned order, the learned Additional Sessions Judge without granting temporary bail has passed an order as effective as that."*

6. As per Rule 1203, it is clear that an undertrial prisoner can be granted custody parole by the trial court concerned in the event of an



exigency for a period of not more than 6 hours excluding the time taken to reach the destination and return to the prison in the eventualities as mentioned in the rule.

7. Accordingly, the question no. 2 is answered as above.

Question no. 1, 3 and 4.

8. As per Rule 1209 of the Delhi Prison Rules, 2018, an undertrial can be granted custody parole by the concerned trial court. However, if the undertrial is in custody in more than one case and there are more than one concerned trial courts, then Rule 1209 is silent as to whether the undertrial should obtain custody parole from each and every concerned court or an order from one court would suffice.

9. From the conjoint reading of the aforementioned Rules, it can be safely inferred that if one Court has issued an order of custody parole for the eventualities as mentioned in the Rule 1203 and the accused is in custody in more than one case, it is incumbent on the Director General Prison / Jail Superintendent to inform the other trial courts about the absence of the accused, and obtain the next date for production of the accused. Further, since the custody parole is for a limited period, it is not required, that the accused has to obtain custody parole from each and every concerned trial court and as such no permission is required from other concerned courts before sending the under-trial on custody parole.

10. Accordingly, the question no. 1, 3 and 4 are answered as above.

11. Since, the custody parole in the present matter had been granted contrary to law, it is further ordered that the time during which the



accused was on custody parole shall not be counted towards his incarceration/period spent in jail.

12. Reference stands answered and disposed of.

13. At this stage, Mr. Rahul Mehra, learned standing counsel for the State submits that accused Sukash @ Suresh Chandrashekhar had previously made a mobile call, wherein the caller's name on *Truecaller* was flashed as "Minister of Law". He states that the caller had informed him that he was a Personal Secretary attached to the Law Minister's Office (Government of India) and that Suresh should be treated well and certain special facilities should be made available to him in the Central Jail, Tihar. He further states that apprehending foul play he immediately called Mr. Saravana Kumar Secretary, Law, Government of India after obtaining his official telephone number. He further states that the said Mr. Saravana Kumar confirmed that no such call had been made at the instance of the Law Minister, Government of India, and it was a fake call.

14. He further states that subsequently he was informed that a similar *modus operandi* was adopted by the accused impersonating himself as Mr. Saravana Kumar, IAS, on the basis of which FIR No. 166/2017 dated 20.09.2017 under Sections 170/120B IPC P.S. Crime Branch was registered on the complaint received from the office of Assistant Commandant, Tamil Nadu Special Police VIII Battalion.

15. Today digital technology makes it easy to create false identities, impersonate politicians and constitutional functionaries. "Deepfake" techniques (manipulating images and video using artificial intelligence) make it cheap and simple to create convincing audio-



visual evidence that people have done or said things which they have not. It is reported that criminals have gleefully exploited these new opportunities. The Economist, a leading magazine in its Article "What is a deepfake?" had stated *"Tools for editing media manually have existed for decades – think Photoshop. The power and peril of deepfakes is that they make fakery cheaper than ever before. Before deepfakes, a powerful computer and good chunk of a university degree were needed to produce a realistic fake video of someone. Now some photos and an internet connection are all that is required."*

16. Keeping in view the aforesaid, this Court is of the view that the legal fraternity, including courts, takes notice of this reality and expose the peddlers of "deepfake" techniques rather than falling prey to it.
17. Registry is directed to place a copy of this order on the file of all the trial Courts where the respondent is facing trial. List for compliance of order dated 19.12.2019 and 20.12.2019 on 24.02.2020.
18. Copy of this order be sent to Jail Superintendent, Tihar Jail.

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MANMOHAN, J

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SANGITA DHINGRA SEHGAL, J

True Copy  
[Signature]

JANUARY 20, 2020/gr



CRL.REF. 5/2019



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GOVT. OF NCT OF DELHI  
OFFICE OF THE DIRECTOR GENERAL OF PRISONS  
PRISONS HEADQUARTER, TIHAR : JANAK PURI : NEW DELHI

✓ F.No.10 (3533153)/CJ/Legal/2020/ 9481

Dated: 08/02/2020.

To

The Hon'ble Court of  
Ld. District & Sessions Judge (Headquarters)  
Tis Hazari Courts, Delhi

In the matter of:

Crl. Ref. No.5/2019  
Court on its own motion Vs. State

**Sub : Order dated 20.01.2020 passed by the Hon'ble High Court of Delhi in Crl. Ref. 5/2019 titled Court on its own motion Vs. State**

Hon'ble Sir,

This is in reference to the order dated 20.01.2020 passed by the Hon'ble High Court of Delhi in Crl. Ref. 5/2019 under Section 395(2) Cr.P.C. vide which issues raised by Special Judge, (PC Act) (ACB-01), Rouse Avenue District Courts, Delhi, regarding custody parole granted by District Courts in r/o undertrial prisoners have been considered and disposed of.

Copy of the order dated 20.01.2020 passed by the Hon'ble High Court of Delhi is enclosed herewith and marked as Annexure-A for kind perusal please.

Paras 6 & 9 of the order dated 20.01.2020 are reproduced herein below:

OIC (General) Para-6

DSS (HQS)  
14.02.2020

"As per Rule 1203, it is clear that an undertrial prisoner can be granted custody parole by the trial court concerned in the event of an exigency for a period of not more than 6 hours excluding the time taken to reach the destination and return to the prison in the eventualities as mentioned in the rule."



Para-9

(11)

"From the conjoint reading of the aforementioned Rules, it can be safely inferred that if one Court has issued an order of custody parole for the eventualities as mentioned in the Rule 1203 and the accused is in custody in more than one case, it is incumbent on the Director General Prison / Jail Superintendent to inform the other trial courts about the absence of the accused, and obtain the next date for production of the accused. Further, since the custody parole is for a limited period, it is not required, that the accused has to obtain custody parole from each and every concerned trial court and as such no permission is required from other concerned courts before sending the under trial on custody parole".

In view of the above, this Hon'ble Court is requested to kindly impress upon the directions/order dated 20.01.2020 passed by the Hon'ble High Court of Delhi, to all judicial officers for kind information and necessary compliance in the case of custody parole to undertrial prisoner.

This is for kind information of this Hon'ble Court please.

This issues with approval of the Director General (Prisons).

Yours faithfully

  
7.1.2020

SUPERINTENDENT-I (PHQ)  
PRISONS HEADQUARTER  
TIHAR NEW DELHI

Encl: As above

Copy to: All SCJs, Tihar/Rohini/Mandoli



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**MANMOHAN, J**

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**JANUARY 20, 2020/gr**