

CNR No. WBHW01-0018394-2022
T R Case No. 16/2022

Order No. 24 Dated: 20.06.2024

Today is fixed for hearing the petition dated 19.06.2024.

Now the petition is taken up for hearing.

The Ld. Counsel for the defence submits before the court on behalf of the accused Tapas Malo, praying for temporary release of the accused person on parole, on account of the death of his father Kalachand Malo.

Perused the same as well as the materials on record.

Heard the Ld. Counsel for the prosecution as well as the Ld. Counsel for the defence.

The Ld. Counsel for the prosecution does not oppose the prayer for parole, but submits before the court that such application should have been filed before the Inspector General of Prison. It is manifest from the death certificate of one Kalachand Malo that he has died on 13.06.2024. It is not disputed that the deceased Kalachand Malo is the father of the accused Tapas Malo. The law is apposite that custody parole for an immediate period may be granted to an under trial prisoner under certain emergent condition. Custody parole contemplates a situation whereby, for special exigencies mentioned in the jail code, the UTP is granted guard a liberty and the jail travels with the petitioner to wherever the petitioner to allow to go under order of the court.

In the present case, the petitioner/accused Tapas Malo has been implicated for commission of offences punishable u/s. 20(b)(ii)(C)/29 of the NDPS Act and he is in custody since 02.04.2022. No adverse report has been received in respect of such accused person, during his judicial custody. The petitioner has just lost his father, as would be manifest from the death certificate that he had filed petition on 19.06.2024 itself and the mental agony which he is obviously suffering from is irreparable loss and prayer has been made by him for parole to attend the funeral ceremony of his father.

In a situation where an UTP seeks custody parole to perform last rites of his father, there is no reason to refuse the same. However, while doing so, the competent authority would be at liberty to impose reasonable restrictions and ensure that such UTP does not flee away, from the clutches of law. It transpires from the petitioner's application that his father's 'funeral rites' ceremony is scheduled from 24.06.2024 to 26.06.2024.

I find it relevant to mention herein that bail and parole have different connotations in law. The effect of granting bail is to release the accused from intermediate custody, though the court would retain constructive control over him through sureties. Parole, per contra, is the temporary release of a person from the detention of custody, due to some contingency, but the jail will continue to accompany him.

Therefore, considering the attending facts and circumstances and the exigency of the demise of the father of the accused Tapas Malo, he is granted parole for 3 days.

The UTP Tapas Malo, detained at Howrah District Correctional Home, is hereby granted parole from the morning (10.00 a.m.) of 24.06.2024 to the afternoon (5.00 p.m.) of 24.06.2024, from the morning (10.00 a.m.) of 25.06.2024 to the afternoon (5.00 p.m.) of 25.06.2024 and from the morning (10.00 a.m.) of 26.06.2024 to the afternoon (5.00 p.m.) of 26.06.2024 for attending the 'funeral rites'/ceremony of his father Kalachand Malo, at his own residence at village Netaji Subhas Colony, near Khamargachi Railway Station, PS-Balagarh, PO-Khamargachi, Hooghly. The UTP shall be precluded from leaving the jurisdiction of village Netaji Subhas Colony, near Khamargachi Railway Station, PS-Balagarh, PO-Khamargachi, Hooghly, during the period of his temporary release on parole.

The Superintendent Howrah District Correctional Home, only after confirming about the vehicular arrangement for the accused, is directed to provide necessary police escort, only for the said limited purpose, as has been sought for by the UTP. The UTP Tapas Malo shall be taken only to his residence,

where the funeral activities will be performed, with necessary police escort. During the period of parole, the Superintendent Howrah District Correctional Home, shall be at liberty to impose reasonable restrictions upon the movement of the aforementioned accused/UTP, during the period of his temporary release on parole and ensure that he is sent back to the correctional home immediately upon the expiry of the period of his parole. The government official concerned should not collect any kind of charge from the accused person/UTP for providing police escort. On the other hand, the UTP is directed to abide by all conditions prescribed under the jail court.

Let copies of this order be sent to the *I.G. (Prison), Commissioner of Police Howrah, Superintendent of Police Hooghly and to the Superintendent Howrah District Correctional Home, for their information and necessary action.*

Fix 27.06.2024 for report from the Superintendent Howrah District Correctional Home, in this regard.

Dictated & Corrected by me,

Special Judge,
In-charge

Judge, Special Court under

N.D.P.S Act, Howrah.
In-charge