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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 671/2016
MUKESH @ RAJESH Petitioner
Through: Mr. Ajay Verma, Adv.
versus

STATE Respondent
Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Jamal Akhtar, Adv. along
with ASI Sanjay, Narcotics Cell,
Crime Branch.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **09.12.2016**

Petitioner has challenged the order dated 21st December, 2015 passed by the respondent-Office of the Directorate General (Prisons), Prison Headquarters, Tihar. By this order, petitioner's application for furlough has been rejected on the ground that a convict under the NDPS Act, is not entitled for remissions as per Section 32A of the Act. It is further stated that furlough is a kind of remission granted to convicts. It has been further observed that petitioner has not earned any AGCR as required under para 26.1 of the Parole/furlough Guidelines-2010. Accordingly, application for grant of furlough has been rejected.

A bench of coordinate jurisdiction, vide order dated 30th November, 2016 passed in W.P. (Crl.) 2390/2016 titled Satpal Mann vs. State, has held

as under :-

“She has also placed reliance on the decision of ***Firoz Hassanali Rupani Vs. State of Maharashtra*** 2009(4) MHLJ (Cri) 543 wherein Bombay High Court has specifically addressed the issue raised in the present case and held that furlough could not be granted in view of the bar created by Section 32A of the NDPS Act. Lastly, she has placed reliance on the judgment of the Supreme Court in ***Krishnan & Ors. Vs. State of Haryana & Ors.*** in Criminal Appeal No. 973 of 2008 decided on 21.01.2014 wherein the Supreme Court considered the letter of the Deputy Inspector General of Prisons, Haryana, wherein it was directed that in view of Section 32A of the NDPS Act, a convict under the said Act should not be granted remission. The Supreme Court upheld the validity of the said communication in view of Section 32A of NDPS Act and held that the authorities can enforce Section 32A and deny remission to a convict under the NDPS Act.

From the aforesaid, it appears to this Court that grant of furlough to a convict under the NDPS Act may not be permissible since Section 32A specifically bars the grant of, inter alia, remission to a conviction under the said Act except those who are convicted under Section 27 of the said Act. The validity of Section 32A, as noticed above, has already been upheld by the Supreme Court. The convict under the NDPS Act, however, can be released on parole. The distinction between release on parole and furlough has been analysed in the aforesaid decisions. Whereas release on furlough tantamount to remission for good conduct and, therefore, the period during which the convict may be granted leave for good conduct would count as sentence undergone, release on parole does not count towards the undergone sentence. It is in this light that a convict under the NDPS Act is prohibited from, inter alia, grant of remission. The statutory object appears to be that a convict under NDPS Act should undergo the actual and complete sentence without remission, suspension or commutation.”

In the afore-referred judgment, learned Single Judge has placed

reliance on the judgments of Bombay High Court and the Supreme Court for taking a view that a convict under the NDPS Act is not entitled to furlough.

For the foregoing reasons, writ petition is dismissed.

A.K. PATHAK, J.

DECEMBER 09, 2016

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