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

+ W.P.(CRL) 2390/2016

SATPAL MANN

..... Petitioner

Through: Mr. Imran Khan, Advocate

versus

STATE

..... Respondent

Through: Ms. Richa Kapoor, ASC with Ms.
Seema Patnaha, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

30.11.2016

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By this petition, the petitioner seeks a direction that he be released on first spell of furlough for a period of three weeks. The petitioner is convicted under Section 20 of the NDPS Act in case FIR No. 132/2010 registered at police station Crime Branch. He has been sentenced to 15 years rigorous imprisonment with a fine of Rs. 1 lakh. In default of payment whereof, he has been sentenced to six months simple imprisonment. The sentence was modified by this Court in appeal on 19.03.2014. The sentence was reduced to 10 years RI with fine of Rs. 1 lakh. In default of payment whereof, he has been directed to undergo SI for three months. The petitioner has undergone five years 10 months and 18 days of incarceration as on 25.07.2016. On three earlier occasions, he has been released on parole, lastly, between 16.02.2016 to 15.03.2016. His jail conduct has been reportedly satisfactory.

The petition is opposed by Ms. Kapoor, learned ASC. She has argued that section 32A of the NDPS Act specifically mandates that no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted. The submission is that grant of furlough tantamounts to remission of the sentence, inasmuch, as, there are four kinds of remissions recognized under the Jail Manual, namely, Ordinary Remission, Annual Good Conduct Remission, Special Remission, and State remission. Furlough is defined under Jail Manual to mean, “*leave as a reward granted to a convicted prisoner who has been sentenced to rigorous imprisonment for five years or more and has undergone three years thereof*”. She has also drawn attention of the Court to the Parole/Furlough Guidelines 2010 in which para 26 lays down the eligibility conditions for grant of furlough. Para 26.1 provides the first eligibility criteria that the prisoner should have earned three annual good conduct remissions and continues to maintain good conduct. Thus, the submission is that as Section 32A specifically prohibits, inter alia, grant of remission of a sentence awarded under the NDPS Act other than Section 27. Furlough, which is annual good conduct remission, cannot be granted to a convict under the said Act.

Ms. Kapoor has also relied upon the observations made by the Supreme Court in ***Dadu @ Tulsidas Vs. State of Maharashtra*** (2000) 8 SCC 437. In this decision, the Supreme Court examined the issue whether a convict under the NDPS Act could be granted parole and held that parole could be granted to a convict under the NDPS Act since it does not amount to suspension, remission or commutation of the sentence. It was held that Section 32A does not affect the power of the authorities to grant parole for

the aforesaid reason.

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 view of the aforesaid, learned counsel for the petitioner does not press for grant of furlough in this petition, however, he prays that the petitioner is also entitled for grant of parole under the guidelines and, therefore, his prayer may be considered for grant of parole.

Since the only reason for refusal of furlough in the present case was the bar under Section 32A of the NDPS Act and the Guideline 26.1 of the Parole/Furlough Guidelines 2010, there is no reason to deny the parole to the petitioner since his last parole expired on 15.03.2016. Learned counsel for the petitioner has submitted that the petitioner would reconnect his social ties if he is released on parole. Accordingly, it is directed that the petitioner be released on parole for a period of four weeks upon his furnishing personal bond with one surety in the like amount of Rs. 10,000/- to the satisfaction of the Jail Superintendent. He shall provide his mobile phone number to the Jail Superintendent which shall be kept in working at all the times and he shall not change that mobile number without prior intimation to the Jail Superintendent.

The petition stands disposed of in the above terms.

Dasti.

VIPIN SANGHI, J

NOVEMBER 30, 2016

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