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

+ W.P.(CRL) No.132/2017

RAKESH @ RAJ

..... Petitioner

Through Mr.Sunil Upadhyay, Adv.

versus

STATE

..... Respondent

Through Mr.Rahul Mehra, Standing Counsel
(Crl.) for the State with Mr.Jamal
Akhtar,, SI Dhananjay, PS Tilak
Nagar.
Mr.Sudershan Joon, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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20.01.2017

The present petition under Section 482 of the Code of Criminal Procedure, has been filed by the petitioner seeking grant of parole for a period of three months in FIR No.136/2008 registered at Police Station Tilak Nagar, on medical ground of his wife namely Kavita, who is stated to be suffering from various ailments. It was submitted that as per the doctors of Sanjay Gandhi Memorial Hospital, Mangolpuri, she was suffering from stone in Gall Bladder and advised operation on 24th January, 2017. It is submitted that the petitioner is in custody since more than eight years.

It is submitted by learned Standing Counsel (Crl) for the State

that the application for grant of parole in respect of Rakesh@Raj, the petitioner herein, was rejected vide order dated 16th November, 2016 passed by the Home (General) Department of the Govt. of NCT of Delhi on the ground that earlier when the convict was granted three weeks parole and also two weeks furlough, on the ground of providing medical treatment to his wife who was said to be seriously ill and admitted to hospital, the petitioner overstayed three days. Perusal of the column no.17 of the nominal roll dated 19th January, 2017 shows that the petitioner was granted two weeks furlough w.e.f. 7th June, 2016 to 21st June, 2016 by D.G. (P) and, thereafter, two weeks furlough w.e.f. 5th August, 2016 to 19th August, 2016 by the D.G. (P) when the convict was late by three days in surrendering i.e. 23th August, 2016. Thereafter, in column no.18 pertaining to the report of misconduct, if any, during interim bail/parole, it was mentioned that even after the expiry of the period of furlough, he did not surrender for three days and surrendered on 23rd August, 2016.

It is further submitted by learned Standing Counsel (Crl) for the State that the application moved for grant of regular bail in respect of the petitioner was rejected by the Home (General) Department of the Govt. of NCT of Delhi vide order dated 19th January, 2017, on the ground that misconduct was reported against the convict as he surrendered three days late on 23rd August, 2016 after availing last furlough.

A submission is made by learned counsel for the petitioner to the effect that the petitioner had overstayed and could not surrender because of the compelling circumstances. The arguments advanced

by the counsel is not acceptable as no convict could be a decision making person not to surrender considering the circumstances as it is the competent court or the authority which is to grant the furlough or parole, who would decide the same upon an application being made in that regard. The perusal of the record shows that the petitioner was granted parole or furlough as and when he asked for. It, further, shows that despite being granted concession from time to time to the petitioner, he misconducted the norms and had not surrendered after the expiry of the furlough granted to him. This court is of the considered opinion that the misconduct of the convict is one of the circumstances which is to be taken into consideration while granting the furlough or parole. It cannot be disputed that not surrendering on the expiry of particular concession tantamounts to misconduct. The argument that it was compelling circumstances is not permissible under the law. It is only the sanction/permission of the competent authority which permits the convict to be out of the jail and for what period. No doubt if there are compelling circumstances, the convict is always at liberty to seek for the extension of the period but not to surrender on the date or seek permission for further period, by no stretch of imagination, can be said to be the reason for not surrendering. The other reason not accepting the submission of learned counsel for the petitioner is that the convict himself could not be the judge or the decision making body to decide the surrender on the expiry of the period granted.

With this observation, the present petition is dismissed.

It is made clear that since the present application is not moved

by the convict himself, it will not bind the convict and that the order passed by this court shall not come in his way if he wants to make any request to the Superintendent (Jail)/Competent authority for any parole or furlough in the present case.

P.S.TEJI, J

JANUARY 20, 2017/aa