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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: 11th April, 2017

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L.P.A. No.206/2017

OM PRAKASH CHAUTALA

..... Appellant

Through

Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Kirti Uphar, Mr.Amit Sahni,
Mr.Vaibhav Mishra & Ms.Anju Vaid,
Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through

Mr.Rahul Mehra, Standing Counsel
(Crl.), GNCTD with Mr.Jamal Akhtar
& Ms.Smriti Datta, Advs. along with
Mr.Vimlesh Kr. Singh, Warden,
Central Jail No.2, Tihar, New Delhi,
in person.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Challenge in the present appeal is to the order dated 01.03.2017 by which the parole granted by the learned Single Judge by an order dated 06.02.2017 was recalled. A specific challenge has been laid to paragraph 18 of this order by which furlough granted by the DG

(Prisons) to the appellant for a period of three weeks was also cancelled.

2. Mr.Sudhir Nandrajog, learned Senior counsel appearing on behalf of the appellant submits that the learned Single Judge had granted parole to the appellant for a period of three weeks by an order of 06.02.2017. However, on a complaint received by Hon'ble the Chief Justice, Delhi High Court that the order granting parole was being misused, the learned Single Judge took up the matter, issued notice to the appellant, thereafter heard arguments and recalled the order granting parole.
3. Learned Senior counsel submits that the question of furlough was not a subject-matter before the learned Single Judge at the time of grant of parole on 06.02.2017; neither it was a subject-matter before the learned Single Judge when arguments were heard seeking cancellation of the order dated 06.02.2017. Mr.Nandrajog further submits that the order by which parole was granted could not have been recalled by the learned Single Judge, as the order was not misused, and the grant of parole and furlough is a right of every convict.
4. Additionally, Mr.Nandrajog clarifies that the appellant had made an application for grant of parole before this Court in the month of December, 2016, after the request made to the Authorities concerned in September, 2016 was rejected in December, 2016. Counsel further clarifies that on the date the application seeking parole was made to this Court, the appellant had not applied for furlough and thus, he could not bring this fact to the notice of the Court in the application for parole. Counsel submits that this Court had granted interim parole

to the appellant on 30.12.2016 to attend the ring ceremony of his grand-son. He further submits that the same grand-son is now getting married and the marriage ceremonies have already begun. Counsel submits that the observations made by the Court, more particularly, in paragraph 18 of the impugned order would come in the way of the appellant for grant of furlough.

5. Mr.Rahul Mehra, learned Standing Counsel for the State submits that the present appeal is a gross abuse of the process of the Court. He has drawn the attention of the Court to various observations made by the learned Single Judge where the conduct of the appellant has been highlighted. He submits that the appellant has misused the liberty granted to him by the Court. The Court was persuaded to grant parole to the appellant taking into consideration his medical condition. And it was found that the appellant was busy attending political rallies and taking into consideration the conduct of the appellant, the Court was forced to cancel his parole.
6. Mr.Mehra also submits that during the course of hearing, he had highlighted the fact that the appellant had applied for furlough which was granted on 06.02.2017 but this fact was not brought to the notice of the Court by the appellant. He submits that in case the Court was made aware that the appellant had simultaneously sought furlough as well, the Court would have considered as to whether two orders could have been passed in favour of the appellant simultaneously (one granting parole and other grant of furlough). He submits that this being a material concealment on the part of the appellant is yet another

attempt to remain outside the jail as he has successfully done as also detailed in the order of the learned Single Judge.

7. In response, Mr.Nandrajog, without admitting that the appellant addressed political rallies, submits that there was no condition imposed upon the appellant while grant of parole that the appellant cannot address any political rally or participate in the same. Counsel further submits that the State was equally well aware that the appellant had sought furlough and the State could have apprised the Court about the application so made by the appellant. At this stage, Mr.Nandrajog submits that the anxiety of the appellant being the grand-father and being 83 years of age is his desire to remain present at the marriage ceremonies of his grand-son and thus, he limits his prayer only for being considered for grant of furlough. Mr.Nandrajog, however, submits that the appellant apprehends that should he seek furlough, the same would be rejected having regard to paragraph 18 of the impugned order. It is submitted by Mr.Mehra that should the appellant make an application today, the same would be considered within two days.
8. We have heard the learned counsels for the parties. Taking into consideration the submissions made, we make it clear that in case the appellant files a fresh application for grant of furlough, the same would be considered independently by the DG (Prisons) within two days of receipt of this order and he would pass an appropriate order in accordance with law, unaffected by any observation made in paragraph 18 of the order of 01.03.2017.

9. In the light of the above, the present appeal is disposed of.
10. *Dasti*, under the signatures of the Court Master. As prayed, copy of this order be also sent to DG (Prisons) by Special Messenger.

G. S. SISTANI, J.

VINOD GOEL, J.

APRIL 11, 2017/ka

