

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

Reserved on: 04.04.2018

Pronounced on: 09.08.2018

+ **LPA 7/2018 & CM APPL. 529/2018**

SUDHIR SHARMA THR PAROKAR/WIFE Appellant

Through: Mr. Dhan Mohan, Ms. Tanu B. Mishra, Mr. Ravi Mishra, Ms. Harkamal Jeet Kaur and Ms. Nadeem Khan, Advs.

versus

THE STATE GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Rajesh Mahajan, ASC for State. Ms. Rajdipa Behura, SPP with Mr. Philomon Kani, Ms. Kriti Handa, Ms. Hansika Sahu and Ms. Damini K., Advs. for CBI. SI Neeraj Kumar.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant is aggrieved by the order of a learned single judge, rejecting his writ petition, which had sought directions to quash the decision of the jail authorities, denying him furlough (from the sentence of imprisonment that he has to undergo).

2. The appellant has been in judicial custody for more than 10 years in a case under Section 420 of the IPC and is over 65 years old. He sought furlough in case RC No. 6 &7(S)/99 and the petitioner has applied for his first spell (of furlough) in that case but the request was rejected by competent authority on 09.08.2017. The appellant says that this was in spite of the fact that his conduct is satisfactory. He submits that he was granted parole in the year 2015, 2016 and 2017 and had never misused the liberty granted during those periods. He had previously filed Writ Petition seeking first spell furlough in 2017 to establish social ties with his family and society but that the petition was rejected. He again applied for grant of first spell furlough in 2017 to establish social ties with his family and society [W.P. (Crl.) 2811/ 2017] but it was again rejected by the court on 05.12.2017.

3. The appellant submits that the Additional Standing Counsel for the State and Special Public Prosecutor for CBI opposed the petition stating that the appellant was convicted in five cases besides the one in which he is seeking furlough in and furthermore in terms of Clause 26.2 (of the Parole/Furlough Guidelines: 2010) [hereafter “the Guidelines”], a convict seeking grant of furlough should not be a “*habitual offender*”. It is submitted that clause 24 of the Guidelines provides that a prisoner sentenced to five years or more of rigorous imprisonment and has undergone imprisonment for three years or more period excluding remission, can be released on furlough.

4. The appellant’s counsel argued that he has already served more than 10 years in judicial custody without remissions. He was implicated as accused in six cases starting from the year 1996. All those cases were of the same nature and most investigating officers and witnesses were common in

all cases and only complainants were different. The appellant was also in custody; yet intentionally and deliberately different cases were filed and charge sheets were filed at different times only with the intent to keep him in long judicial custody. It is submitted that in case under Section 420 of IPC the petitioner was sentenced for 19 years 9 months. The details of the cases are as under:

S.No	Case No.	Under Section	Conviction	Status
I	RC 4(S)/01 SIC-1/CBI	U/S 380/419/420/465/467/471/120B IPC & 12 PASSPORT ACT.	R.I. FOR 03 YEARS & FINE RS. 10,000/- I.D 09 MONTH S.I.	Sentence completed on 16.01.2013, Fine Paid
II	RC 7(S)/98	U/S 419/420/511/120B IPC & 12 PASSPORT ACT.	R.I. FOR 09 MONTH S & FINE RS. 20,000/- I.D 08 MONTH S	Sentence completed on 02.07.2013, Fine paid
III	RC 3(S)/98	U/S 419/420/465/467/471/411/ 474/380/120B IPC	R.I. FOR 03 YEARS & FINE RS. 28,500/-	Sentence completed on 12.09.2014, fine paid

			I.D 27 MONTH S AND 15 DAYS S.I.,	
IV	RC 4(S)/98	U/S 471/419/465/467/468/ 120B IPC	R.I. FOR 03 YEARS & FINE RS. 14,000/- I/D 12 MONTH S S.I.	Sentence completed, fine paid
V	RC 6&7(S)/9 9	U/S380/419/420/467/120B IPC & 12 PASSPORT ACT	R.I FOR 3 YEARS & FINE RS. 7,000	Undergoing sentence and fine paid in court
VI	RC 5(S)/01	U/S. 379/380/465/468/471/120 B IPC & 12 PASSPORT ACT	R.I FOR 07 YEARS & FINE RS. 40,000/- I.D 07 YEARS S.I	Sentence completed for two years and five months during trial and appeal is pending before this Court (CrI.No.236/ 2013)

5. It is argued that the appellant is not a habitual offender, but in all the cases the CBI arrested him in one case, and thereafter chose to separate proceedings, in which the complainants were different, though the investigation agency, the evidence and Inquiry Officer (IO) were same and CBI deliberately showed that he was accused in several cases. It is submitted that given that he could have been tried for the cases, jointly, since the nature of the evidence and the IO were common, in which event he would have benefitted from the sentence, that ran concurrently. That benefit was denied, as he was tried at different points in time. This provided scope for the CBI to say that he was a habitual offender. It is further submitted that the main accused in all cases fled India after securing bail and the appellant is the only person who has no role despite his long spell in judicial custody.

6. It was argued on behalf of the appellant, that he is working in jail in several departments and cooperating with the respondents, helping the convicts in various areas. The details of the departments where the petitioner has worked during his incarceration are:

- a. Educational Service
- b. Prisoner Welfare Fund
- c. Welfare Activities
- d. Disaster management
- e. Remission Department
- f. Canteen Department

7. It was argued that the Furlough Guidelines are to be construed in a fair and reasonable manner and not so as to deny the benefit altogether. It was submitted that the object of granting furlough to convicts is to ensure that their connections with society are not severed and that they keep renewing their ties with family and other sections of society from time to time. The

broad and blanket categorization of a convict as a habitual offender, (a term not defined) leaving scope to the authorities to decide what type such offender is, amounts to granting whimsical and arbitrary power to the concerned officials, without any guidelines regarding its exercise. It was, therefore, submitted that a literal construction of the relevant condition - (Clause 26.2) is unwarranted and arbitrary.

8. Learned counsel for the CBI, Ms. Rajdipa Behura, argued that the impugned order does not call for interference. She relied on the text of Clause 26.2 and the judgment of this court in *Dinesh Kumar v. Govt. of NCT of Delhi* 2012 CrI.L.J. 2959. It was submitted that decisions of the Supreme Court held that a person can be said to be a habitual criminal if he by force of habit or inward disposition is accustomed to commit crimes. The expression implies commission of such crimes repeatedly or persistently and *prima facie* there should be a continuity in the commission of those offences. Counsel relied on *Ayub @ Pappukhan Nawabkhan Pathan v. S.N. Sinha*, AIR 1990 SC 2069; *State of Haryana v. Mohinder Singh*, AIR 2000 SC 890; *Vijay Amba Das Diware v. Balkrishna Waman Dande*, AIR 2000 SC 1414 and *Vijay Narain Singh v. State of Bihar*, AIR 1984 SC 1334.

9. Ms. Behura also argued that furlough cannot be claimed as a matter of right and its grant or refusal would be subject to terms and within the framework of the concerned guidelines. In the present case, clearly the guidelines circumscribed the grant of parole to different class of offenders, one of them falling within Clause 26.2. Therefore, in the absence of any other material that suggests the entitlement of furlough to the appellant, he was justifiably denied that relief.

10. The learned single judge, in this case, rejected the petition for furlough, stating as follows:

“2. Learned Additional Standing Counsel for the State and learned Spl. PP for CBI opposing the petition state that the petitioner has been convicted in five cases besides the instant one in which he is seeking furlough and as per Clause 26.2 of the Parole/Furlough Guidelines : 2010, convict praying for grant of furlough should not be a habitual offender. Further, Clause 24 of the Guidelines says that a prisoner who is sentenced to five years or more of rigorous imprisonment and has undergone imprisonment for three years or more period excluding remission, can be released on furlough. Learned counsel for CBI relies on the decision reported as 2012 CrL.L.J. 2959 Dinesh Kumar vs. Govt. of NCT of Delhi.

3. Furlough is granted as a reward for good behaviour/conduct. Since the conduct of the petitioner is violation of the Parole/Furlough guidelines this Court finds no ground to grant furlough to the petitioner.

4. Petition is dismissed.”

11. That the furlough guidelines in this case are as under:

“PAROLE/FURLOUGH GUIDELINES

24. A prisoner who is sentenced to 5 years or more or rigorous imprisonment but has undergone 3 years of imprisonment excluding remission can be released on furlough.

25. A prisoner, as described above, would be entitled to 7 weeks of furlough in a year. The first spell could consist of 3 weeks, while the subsequent spells would consist of 2 weeks each.

26. In order to be eligible to obtain furlough, the prisoner must fulfil the following criteria:-

26.1. Good conduct in the prison and should have earned three ‘Annual Good Conduct Remissions’ and continues to maintain good conduct;

26.2. The prisoner should not be a habitual offender;

26.3. The prisoner should be a citizen of India.

26.4. The prisoner should not have been convicted of robbery, dacoity, arson, kidnapping, abduction, rape and extortion;

26.5. The prisoner should not have been convicted of any offence relating to any offence against the State such as sedition;

26.6. The release of the prisoner should not be considered dangerous or deleterious to the interest of national security or there exists reasonable ground to believe that the convict is involved in a pending investigation in a case involving serious crime;

26.7. The convict is not such a person whose presence is considered highly dangerous or prejudicial to the public peace and tranquility by the District Magistrate by his home district.

27. If an appeal of a convict is pending before the High Court or the period for filing an appeal before the High Court has not expired, furlough will not be granted and it would be open to the convict to seek appropriate directions from Court.”

12. The petitioner claims that he has been working in jail in several departments and cooperating with the jail authorities. These are by way of educational service, prisoner welfare fund, welfare activities; disaster management (presumably in training etc) and assisting in the remission and canteen functions of the jail administration. The learned single judge rejected the first furlough request. The request made is in respect of RC 6&7 (S)/1999. He was involved in several other cases, i.e. RC 4(S)/98, RC 4(S)/01, RC 7(S)/98, RC 3(S)/98, RC 6 & 7(S)/99 and RC 5(S)/01. All were registered and prosecuted by CBI. These involved a similar pattern of offences alleged; they were broadly speaking, passport fraud and forgery.

13. As per the Nominal Roll, the details of conviction in other cases with respect to various offences

*“1. RC 4(S)/01 SIC-1/CBI U/S 380/419/420/465/467/471/120B IPG & 12 PASSPORT ACT, PS CBI (CONVICTION R.I. FOR 03 YEARS & FINE RS.10,000/- I.D 09 MONTH S.I) (FINE PAID IN COURT) SENTENCE COMPLETED ON 16.01.2013.
2. RC 7(S)/98 U/S 419/420/511/1208 IPC&12. PASSPORT ACT, PS CBI (CONVICTION R.I. FOR 09 MONTHS & FINE RS.20,000/- I D 08 MONTHS) (FINE PAID IN COURT) SENTENCE COMPLETED ON 02.07.2013.
3. RC 3(S)/98 U/S 419/420/465/467/471/411/474/380/120B IPG, PS CBI (CONVICTION R I. FOR 03 YEARS & FINE RS. 28,500/- I.D 27 MONTHS AND 15 DAYS S.I.) (FINE PAID IN COURT) SENTENCE COMPLETED ON 08.10.2015.
4. RC NO 4(S)/98), U/S 471/419/465/467/468/120B IPC. CBI, (CONVICTION R.I FOR 03 YEARS & FINE RS 14,000/- L/D 12 MONTHS S.I) SENTENCE COMPLETED ON 06.10.17.
5. RC 5 (S)/01 U/S 379/380/465/468/471/120B IPG & 12 PASSPORT ACT, PS CBI (CONVICTION R.I. FOR 07 YEARS & FINE RS 40,000/- I D 07 YEARS S.I) SENTENCE YET TO BE START AFTER COMPLETION OF SENTENCE IN RC NO. 68.7 AND (APPEAL PENDING BEFORE HON'BLE HIGH COURT OF DELHI).”*

14. The appellant's grievance is that the learned single judge failed to consider that the fact that the petitioner was awarded sentence in the year 2010 and appeal has been dismissed in the year 2011 and that the jail authorities are treating his period of sentence as having commenced much later. It is urged that the appellant completed 03 years of his sentence which is the requirement for furlough. He also complains that his satisfactory conduct, is evidenced by the jail authorities, who remark, in the Nominal Roll, that:

“DURING HIS INCARCERATION HE ASSISTS JAIL ADMINISTRATION IN WELFARE VOCATIONAL,

EDUCATIONAL, RECREATIONAL ACTIVITIES AND HIS CONDUCT FOUND SATISFACTORY.”

15. The record shows that the appellant was convicted for almost identical, largely similar offences, relating to involvement in forgery and use of false papers and passports, for offences punishable under Indian Penal Code and the Passports Act. Cumulatively, he has to undergo over 19 years imprisonment. When the first of the prison sentences was handed down, he was over 53-54 years; he is today nearly 66 years. In between, by three orders of this court (dated 6th November 2015 in W.P.(C) 2576/2015; 30th August 2016 in W.P.(C) 2096/2016 and dated 2nd March, 2017 in W.P. (C) 248/2017) he was granted parole on genuinely verified grounds (death of his mother, occasion of finalizing his daughters' marriage and to perform his mother's annual death ceremony). On each occasion, the parole was for four weeks. He appears to have a family of three major children, including a daughter of over 35 years. He is also a grandfather. Therefore, the question is whether his request for granting furlough in the circumstances, was rejected on reasonable and sustainable grounds.

16. The distinction between the two expressions, i.e. *parole* and *furlough*, were elaborated by the Supreme Court in *Asfaq vs. State of Rajasthan and Ors.* (2017) 15 SCC 55 in the following terms:

“13. This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:

(i) Both parole and furlough are conditional release.

(ii) Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.

(iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society.

{See State of Maharashtra and Anr. v. Suresh Pandurang Darvakar (2006) 4 SCC 776; and State of Haryana and Ors. v. Mohinder Singh (2000) 3 SCC 394}.

14. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we

recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, albeit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

15. *The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.”*

In this case, the appellant would *prima facie* qualify for furlough, given the condition in Rule 24 of the Guidelines that it applies to one “*who is sentenced to 5 years or more or rigorous imprisonment but has undergone 3 years of imprisonment*”. What appears to be coming in his way, however, is the condition that the accused convict should not be a “habitual offender”.

17. The respondents had relied on certain decisions to state that furlough should not be granted in this case. In *State of Haryana v. Mohinder Singh*, AIR 2000 SC 890 the court had to decide if a convicted prisoner was entitled

to remission of sentence for the period during which he was enlarged on bail, by virtue of a circular under Section 432 of the Code of Criminal Procedure which stated *inter alia*, that remission will also be granted to all the convicts who were on parole/furlough from the jail subject to the condition that they surrender at the jail on the due date after the expiry of parole/furlough to undergo the unexpired portions of their sentences. The court analyzed the terms "bail", "parole" and "furlough" and their different meanings and connotations, by examining dictionary meanings and how the terms were used in jail manuals of different States. In this context, the court held that "parole" and "furlough" were two different terms. The Court eventually held that since the circular specifically applies to the prisoners who were undergoing sentence and were confined in jail, and even to those who were on parole or furlough, it could not be extended to convicts who were on bail and thus carve out another category which the Court was not entitled to do under Section 432 of the Code. In *Ayub @ Pappukhan Nawabkhan Pathan v. S.N. Sinha*, AIR 1990 SC 2069, the court was interpreting Section 2(c) of the Gujarat Prevention of Anti-Social Activities Act, 1985, which defined "dangerous person" as someone who "habitually commits" offences. In this context, the Court held that a person can be said to be a habitual criminal if he by force of habit or inward disposition is accustomed to commit crimes implying repeated commission of crimes and *prima facie* there should be a continuity in the commission of those offences. In the facts of the case, the Court found that there was only one criminal case pending against the accused and the other two cases had already resulted in acquittal. Hence, the accused could not be called a habitual offender. Even the case that was

pending, the court found to be not of such character as to warrant the accused being classified as habitual offender.

18. In *Vijay Amba Das Diware v. Balkrishna Waman Dande*, AIR 2000 SC 1414, the question before the court was whether under a particular rent control order, the appellant-tenant could be classified as a habitual defaulter in payment of rent. The Court noted that the expression 'habitual' would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that tenant was a habitual defaulter. In the facts of the case, the Court found that the tenant was in fact a habitual defaulter, as he deposited rent in instalments and continuously defaulted in payment of rent. *Vijay Narain Singh v. State of Bihar*, AIR 1984 SC 1334 was a case where the individual was detained under the Bihar Control of Crimes Act, 1981 read with a notification of the Bihar Government vesting the powers of detention in the District Magistrate. The petitioner was alleged to have created ruckus with an unlicensed pistol and on a separate occasion harassed women and police personnel. It was, therefore, contended that he was an "anti-social" element under the Act. Under the Act, an "anti-social" element was a person who *inter alia* habitually commits certain types of offences. The Court noted that the expression 'habitually' meant 'repeatedly' or 'persistently'. It implied a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts were necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind or an aggregate of similar acts or omissions. The Court held that the accused was acquitted of two of the

offences for which he was charged and at any rate, the categories or types of offences were not similar. Hence, he could not be called a habitual offender. *State of Maharashtra v. Mehamud*, (2007) 12 SCC 358 was a case where the court was concerned with the definition of "dangerous person" within the meaning of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981. The definition of "dangerous person" used included the expression "habitually commits" offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. After referring to a number of cases on the issue, the Court held that the term "habitually" implied that a person by force of habit or inward disposition is accustomed to commit crimes. The word "habitually" does not refer to the frequency of the occasions *but to the invariability of a practice and the habit has to be proved by totality of facts*. In the facts of the case, the Court found that the detainee was involved in fourteen cases and several cases were pending which related to offences punishable under Chapter XVI and XVII of the IPC and Chapter V of the Arms Act, 1959. The Court held that the High Court's finding that there must be a conviction before it can be said that the detainee habitually commits offences, was clearly unsustainable. *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta*, (1995) 3 SCC 237 was a decision, which considered detention under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 and the detainee was considered a "dangerous person". Section 2(c) of the Act defined "dangerous person" as a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian

Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. The Court held that the provisions of the Act were intended to deal with habitual criminal, dangerous and desperate outlaws who were so hardened and incorrigible that the ordinary provision of the penal laws and the moral fear of punishment for crime were not sufficient deterrents for them. The Court cited with approval *The Law Lexicon* by Ramanatha Iyer, which defined "habitually" to mean constant, customary & addicted to specified habit and the term habitual criminal may be applied to anyone who had been previously convicted of a crime to the sentences and committed to prison more than twice. The Court held that the complicity of a person in an isolated offence was neither evidence nor a material of any help to conclude that a particular person is a 'dangerous person' within the meaning of the Act. In the facts of the case, the Court found that there was a single instance of the detainee beating up a businessman. With regard to the other incidents, the Court found that the allegations were sweeping, without any material to support it and there were no timely reports made to the police about any of those incidents. Moreover, the Court found that the mere possession of an old revolver without anything more also did not make the detainee a dangerous person. Owing to these stray incidents having no thread of continuity, the Court quashed the detention order.

19. *State of Maharashtra v. Suresh Pandurang Darvakar*, (2006) 4 SCC 776 was a case where the Court considered Rules 4(4) and 6 of the Prison (Bombay Furlough and Parole) Rules, 1959 framed under Section 59 of the Prisons Act, 1894. Under the Rules, the Court noted that the expressions "parole" and "furlough" had different meanings. It was not necessary to state

the reasons while releasing the prisoner on furlough, but in case of parole reasons are to be indicated. Furlough is allowed periodically irrespective of any particular reason merely with a view to enable the prisoner to have family association, family and social ties and to avoid ill effect of continuous prison life. Period spent on furlough is treated as a period spent in the prison. But period spent on parole is not to be counted as remission of sentence. Since furlough was granted for no particular reason, it could be denied in the interest of society; whereas parole was to be granted only on sufficient cause being shown. In the facts of the case, the Court found that the prisoner concerned could not be released on furlough because his release was not recommended by the concerned authority, which was a mandatory requirement under the Rules.

20. A common feature of these decisions, is that the Supreme Court has repeatedly emphasized that “habitually” implies a force of habit, or persistence, of a kind that discloses a common pattern or thread of behaviour. The court also repeatedly emphasized on the existence of continuity, to lead one to conclude that a convict was a habitual offender. Isolated instances were held not to be sufficient to constitute habitual offences. The other feature is that the distinction made between parole and furlough, underlined by the decisions, was that whereas the former was for a purpose, the latter was to enable the convict to re-establish his ties with society. In *Dinesh Kumar (supra)* it was held that:

“The most relevant aspect which needs to be focused is as to whether offences specified in Clause 26.4 are to be treated per se ineligible for the grant of furlough. As mentioned above, this exclusion presumes that the convict would have a tendency to

commit such an offence again. According to us, generalizing this underlying presumption may not be valid and it should be examined on case to case basis. By no means it is suggested that convicts of the offences specified in Clause 26.4 are to be granted furlough. If this category is not excluded, at the most, they become eligible for consideration. Still such persons will have to satisfy the conditions of furlough mentioned in other provisions of Clause 26. After all the competent authority will still have discretion to deny furlough in particular cases. It would still be seen as to whether the prisoner depicted good conduct and behaviour in the prison and continues to maintain good conduct. The furlough can also be denied if he is a habitual offender or is involved in a pending investigation in a case involving serious crime. As per Clause 26.4 or 26.7 furlough can be denied even to that convict whose presence is considered highly dangerous or prejudicial to the public peace and tranquility by the District Magistrate by his home district. Thus, there are sufficient safeguards provided in clause 26, on an application of which a person can be denied furlough even if he is convicted of lesser offences. While examining a particular case, the competent authority can definitely consider the matter as to whether a particular convict is on the path of reformation or he still has the tendency to commit the crime if he is released on furlough. Reports from the Counselors, psychiatrists and other concerned officials of Jail who are closely monitoring him can always be obtained for this purpose. On the other hand what Clause 26.4 does is to make convicts of such offences per se ineligible for furlough on the basis of farfetched and illogical presumption that they have become "habitual offenders" and are incapable of being reformed.. There have been numerous instances of reformation of those prisoners convicted of the offences of dacoity and robbery.

43. Furthermore, the competent authority while examining such cases can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc. On the other hand, if such a convict

is rendered totally ineligible for furlough, it would negate the very purpose of grant of furlough viz. affording him opportunity to maintain links with society; to solve personal and family problems; breathe fresh air for at least some time; and opportunity to become good citizen.”

21. The CBI had filed the relevant judgments which had recorded the convictions of the appellant, in all the six cases, he was implicated in as an accused. They show that between 1992 to 1997/98, the offences were committed by him, in conspiracy with others. No doubt, there is similarity of these offences. Yet, it would be difficult to characterize that he was a “habitual” offender. The fact that most of these cases were registered, at different times, though the period of their commission is common, is undeniable. As a consequence of this peculiar feature, the trials took place in the latter part of 1999 and ended in 2009-2010. In between, the appellant was in and out of prison; he has claimed set off of those periods, in respective of the cumulative prison sentence of 19 years. He has completed sentence in four out of the six cases he was convicted in; the total period of sentence undergone by him appears to be about 11 years. Given these objective circumstances, it is evident that any criminal propensity that he had about two decades ago (when the offences were committed) must have diminished altogether or extinguished. It is also a fact that today he is over 65 years; he has a family of grown up married children and is even a grandfather. Having regard to these facts, the peculiar feature that he had committed several offences (maybe in sequence, but which were pursued one after the other by the CBI) will in effect hang on his neck as a millstone in perpetuity and deny him the right to seek furlough.

22. In these background of circumstances, this court is of opinion that the criteria for consideration of furlough applications, indicated by *Dinesh Kumar* (supra) i.e. that the authorities should follow “*stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc. On the other hand, if such a convict is rendered totally ineligible for furlough, it would negate the very purpose of grant of furlough viz. affording him opportunity to maintain links with society; to solve personal and family problems; breath fresh air for at least some time; and opportunity to become good citizen*” would squarely apply to the facts of this case. There is objective evidence in the form of satisfactory/good conduct on his part and participation in prison activities, in assisting the authorities in various works, as well as the fact that on each occasion in the past, when he was let out on parole, he never abused his liberty, on the three occasions in the past three years, in this court’s opinion, renders him an eligible candidate for consideration; he is directed not to be treated as a “habitual offender”.

23. The appellant is not in the prime of his life; his best years – when he could have seen a budding family and participated in the thrill of new life as a grandfather, have gone by. He is not a lifer; no doubt the crimes he was convicted of were serious and he, therefore, received his “just deserts” so to speak. Yet, he is not beyond redemption. His past prison record assumes significance as does his conduct (which was blameless) during the time he was let out on parole. Society seldom survives if they feel that offenders and sinners are beyond redemption. Jurisprudence in an evolved society, presupposes that the ultimate goal of all penal sanctions is to reform the

individual, not eradicate her personality. As wisely put in verse, if a soul is “shut out” it is extinguished:

*“Shut in by sin and self, the soul
Is prisoned in a dungeon deep
And there shut out from God and Man
Dies in a sleep...
(From the “Tramp”)*”

24. The respondents shall process the appellant’s application for furlough, in accordance with the above directions, within two weeks and pass an order. The appeal is accordingly allowed, with no order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**A.K. CHAWLA
(JUDGE)**

AUGUST 9, 2018

नित्यमेव जयते