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

Date of Decision: 07.09.2018

+ LPA 516/2018

VIKAS YADAV

..... Appellant

Through: Mr. K. Singhal with Mr. Nishant
Bhardwaj, Advs.

versus

STATE NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rajesh Mahajan, ASC (Crl.) with
Ms. Jyoti Babbar, Adv. for R-1/State.
Ms. Shilpi Dey, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

RAJENDRA MENON, CHIEF JUSTICE (ORAL)

CM APPL. 36305/2018 (*exemption*)

Allowed, subject to just exceptions.

The application stands disposed of.

CM APPL. 36306/2018 (*condonation of delay*)

For the reasons stated in the application, delay in filing the appeal is
condoned.

The application stands disposed of.

LPA No.516/2018

1. Seeking exception to an order passed by the learned writ Court on 09.07.2018 in W.P.(Crl.) 2901/2017, this appeal has been filed under Clause 10 of the Letters Patent.
2. Petitioner has been convicted and is undergoing the sentence. Seeking his release on furlough for 21 days, an application was filed by the

petitioner on the ground that the period of incarceration is over 16 years 3 months and 16 days and during this period petitioner has not been granted furlough even for one occasion. The Competent Authority having rejected the same on 17.05.2018, petitioner approached the writ Court and the writ Court also dismissed the writ petition and therefore this appeal. It is the case of the appellant before us that the learned writ Court has misconstrued the entire matter and placing reliance on a judgment of the Hon'ble Supreme Court in the case of *Maru Ram, etc. etc. v. Union of India* (1981) 1 SCC 107, the ground canvassed before us was that what is laid down by the Hon'ble Supreme Court in the case of *Maru Ram* (supra) is to the effect that remission cannot be granted to a convict who has been directed to undergo imprisonment without any remission for a specified period of time. It is argued that the reason given by the learned writ Court to say that the case of the petitioner for furlough can be considered only after 25 years of imprisonment is a misconception and therefore interference is sought for on this ground. The learned writ Court has dealt with the same in detail and in Para 9 the learned writ Court has given its reason. We find no error in the same warranting reconsideration. If the order impugned passed by the Competent Authority on 17.05.2018 is taken note of, it would be seen that the request for grant of furlough was made on the ground of ailment of petitioner's aged mother and it has been rejected on the ground that the petitioner's conduct in prison has not been uniformly good which is a pre-requisite for grant of furlough. Four instances of misconduct in the jail and the punishment imposed on the petitioner are indicated in the order.

3. Learned counsel for the appellant emphasized that the punishment imposed are with mala fide intention only to deny the appellant benefit of

furlough or parole whenever sought for and it was also indicated that certain orders imposing the punishment are challenged before this Court in various other petitions.

4. Be that as it may, the only question warranting consideration by us is as to whether based on the guidelines issued for grant of furlough/parole indulgence into the matter now in this appeal is called for. The Parole and Furlough Guidelines, 2010 are available on record and a perusal of the same goes to show that under Clause 26 the criterias for grant of furlough have been laid down. Clause 26.1 reads as under:

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

5. From the aforesaid, it is clear that a convict who has earned good conduct in prison and who has to his credit three annual good conduct remissions and continues to maintain good conduct. The words used in this provision is “annual good conduct remission”. Admittedly, the order of conviction passed against the petitioner clearly stipulates that the petitioner has been awarded 25 years imprisonment with a condition that he shall not be granted any remission during the aforesaid period. It is after taking note of these provisions that the learned writ Court has found that the petitioner should earn atleast three annual good conduct remissions and as there is a prohibition in granting any remission to the petitioner in Para 9 of the impugned order, the learned writ Court has dealt with the issue in the following manner and has also referred to the judgment in the case of *Maru Ram* (supra):

“9. Be that as it may, the Court is of the view that in the first instance, the petitioner has to qualify for consideration for furlough in terms of the order of the Division Bench, which has been upheld by the Supreme Court. The Annual Good Conduct Remissions would be considered only after 25 years. Since that situation has not arisen, the petitioner is not eligible for being considered for the furlough sought. The reliance by the learned counsel for the petitioner on the order of this Court in Aman Kumar Rastogi; (order dated 18.08.2015) in W.P.(Crl) 1174/2015 is misplaced because it relies on Maru Ram Etc. vs. UOI (1981) 1 SCC 107 which is apropos the grant of parole to a convict and not furlough.”

6. Once the order of conviction of the petitioner prohibits considering his case for remission for a period of 25 years, the petitioner would not be entitled to any remission much less the annual good conduct remission which is a pre-condition for grant of furlough. The Competent Authority on subjective satisfaction having found the conduct of the petitioner while undergoing the conviction to be not good, and after proper interpretation of the guidelines having rejected the same and the learned writ Court also on reconsideration has approved this rejection, we see no error or illegality in the same warranting reconsideration by us now in this appeal.

7. In our considered view, the learned writ Court has addressed the legal question and the issue involved in the right perspective and we see no reason to make any deviation from the same.

8. Accordingly, the appeal stands dismissed.

CHIEF JUSTICE

SEPTEMBER 07, 2018/kks

V. KAMESWAR RAO, J