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

+ W.P.(CRL) 2901/2017, CRL.M.A. 1224/2018

VIKAS YADAV

..... Petitioner

Through: Mr. K. Singhal, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Rajesh Mahajan, ASC for respondent.

Mr. P.K. Dey, Ms. Shilpi Dey and Mr. Manish, Advs. For R-2 and R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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09.07.2018

1. The petitioner seeks furlough for 21 days. The learned counsel for the petitioner submits that despite being in incarceration for over 16 years 3 months and 16 days, the petitioner has not been granted furlough even on one occasion. He submits that the rejection of furlough is without any basis and application of mind.

2. The petitioner's application was rejected by order dated 17.05.2018 which reads as under:

"With reference to your office letter F.3/SCJ-3/AS(CT)/Parole/2018/831 dated 11.04.2018 on the above subject, I am directed to inform you that the request in respect of convict for grant of parole on the grounds "to take care of his aged and ailing mother, to combat inner stress and depression arising due to long continuous incarceration of more than 16 years." has been considered by the Competent Authority in the matter & rejected in

view of fact that the convict is involved in multiple criminal cases & including some in the prison i.e. Punishment dated 10.10.07 (Assault on ward sahayak) Punishment dated 28.05.12 (10 cigarettes recovered) Punishment dated 10.07.13 (Assault on ward sahayak) Punishment dated 15.09.17 (recovery of prohibited i.e. shaving razor articulated inside jail). Looking into his habitual nature to commit crime, parole is not recommended.

The convict is' not entitled for parole as per para 11.2 of Parole/Furlough Guidelines, 2010 which provides that "the conduct in prison must have uniformly good" as the convict has been punished on 15.09.17.

The convict may be informed accordingly."

3. The learned counsel for the petitioner submits that the punishment awarded for the alleged possession of article i.e. a shaving razor inside the jail, is not substantiated and cannot be a ground for the punishment awarded to the petitioner. The alleged recovery has been challenged in another Writ Petition (CrI.) 206/2018 which is pending adjudication. It is argued that other ground for the denial that the petitioner is habitual in committing crimes while undergoing imprisonment, is also not made out; that it is not a matter of coincidence that the three punishments awarded to the petitioner on various dates i.e. 10.10.2017, 28.05.2012 and 10.07.2013 were on account of something having been happened earlier. He contends, that curiously these punishments were awarded each time after the petitioner's application for interim bail was listed before the Court, in order to deny him the relief sought; that similarly, the present punishment also was awarded to the petitioner immediately after his

application for furlough was filed. It is the petitioner's case that the shaving razor which was found in the petitioner's cell was used only by his father who was duly permitted to use it; that it was not a naked blade which could have been used to inflict injury to anybody; that no enquiry was conducted in the matter and the petitioner was straightway punished for being in possession of the said shaving razor. Referring to the observation of the Division Bench in Crl. Appeal No. 910/2008, the learned counsel for the petitioner submits that the said observations that enhanced the petitioner's imprisonment to 25 years, by themselves cannot be a ground for now denying furlough to the petitioner; it is argued that the observations were made only in the context of enhancement of sentence and the same cannot be used in perpetuity to deny the petitioner all subsequent legitimate reliefs, howsoever minor.

4. Mr. Rajesh Mahajan, the learned Additional Standing Counsel for the State opposes the relief sought, on the ground that in the first instance, the petitioner has to qualify for consideration for grant of furlough. The substantial qualification is that the convict should have earned three Annual Good Conduct Remissions. He submits that in the petitioner's case, this situation would not arise for the petitioner for 25 years in view of the order dated 06.02.2015 of the Division Bench, as upheld by the Supreme Court of India. Therefore, in the absence of three Annual Good Conduct Remissions, petitioner would not even be eligible for consideration for grant of furlough, let alone a decision on the merits of his application. In support of the second ground for rejection of the furlough, he submits that the petitioner is a

habitual offender, and was given punishments in the year 2007, 2012, 2013 and 2017 ; this shows that the petitioner has consistently violated the Jail Rules in the past decades and has even assaulted jail personnel on two of the occasions; his conduct in the jail has been recorded as unsatisfactory especially because he was in possession of the shaving razor, which is a prohibited article. The learned counsel for the State further submits that the petitioner's exasperation apropos his contention that he was awarded punishments on every occasion in order to deny him furlough or relief sought on various dates is not borne out from the facts as in the present case; furlough was sought by the petitioner on 07.11.2016 whereas the punishment was awarded to him on 15.09.2017 on account of the recovery of shaving razor from his cell, therefore, the unsatisfactory conduct was recorded due to the petitioner's own mistake after a period of 10 months from the date of filing of his application for furlough. It is trite to say that an application for furlough can be considered only when the eligibility condition is met with. Furlough is not a right and it is important to consider the conduct of the prisoner for the grant of furlough¹.

5. The learned counsel for the complainant opposes the petition on the ground that this is not an ordinary case as the petitioner was given 25 years imprisonment with the condition as mentioned hereinabove, that his remission will be considered only after 25 years. He submits that the petitioner has not come to the Court with clean hands inasmuch as he sought to make out a case seeking to maintain and enhance social ties and to look after his daughter; his conduct is borne

¹ State of Maharashtra & Anr. v. Suresh Pandurang Darvakar; AIR 2006 SC 2471

out from the fact that he seeks to look after his daughter, though he is unmarried and therefore has no daughter. Therefore, he submits that the petitioner should be prosecuted for perjury. He further submits that a person who seeks to mislead the Court by pleading a wrong fact is not entitled to the discretionary writ jurisdiction. He refers to the judgment of the Supreme Court in ***K.D. Sharma vs. Steel Authority of India Limited and Others*** (2008) 12 SCC 481 which held as under:

34. The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by

deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under [Article 32](#) or of a High Court under [Article 226](#) of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

6. The learned counsel for the complainant submits that the crime for which the petitioner is undergoing punishment was committed by him at the time when he was out on bail in another case i.e. Jessica Lal Murder case, therefore he had clearly misused the liberty granted to him while the matter was under adjudication.

7. He further submits that the conduct of the petitioner throughout his period of incarceration does not inspire confidence to release him on furlough, especially in view of the facts as noted by the Division Bench of this Court in paras 801, 802 and 810 of the judgment, that while the petitioner was admitted in AIIMS for 21 days, he misused the liberty granted to him on medical grounds by absconding from the

hospital for four nights at his father's farmhouse in Delhi. He also submits that because of the severe threat perception assessed for the complainant for the past 16 years, which exists even today, she has been given protection by the Delhi Police; although the security has been provided to the complainant and one witness by the Court for their protection, nevertheless, the threat perception does subsist and it is the duty of the police to ensure their safety and security.

8. Referring to the submission apropos the petitioner's daughter and ground B of the petition, the learned counsel for the petitioner submits that evidently, it is a typographical error insofar as it is an error having been committed by a counsel while seeking to butterace a number of grounds for the petitioner; it is a cut and paste work on the computer and the said ground is permitted to be deleted. It is so ordered. He submits that paragraph nos. 801 and 803 of the judgment of the Division Bench is a mere reproduction of the complainant's arguments.

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 Rustogi*; (order dated 18.08.2015) in W.P. (Crl) 1174/2015 is misplaced because it relies on *Maru Ram Etc. vs. UOI* (1981)1SCC107 which is apropos the grant of parole to a

convict and not furlough.

10. In view of the above, the Court finds no merit in the petition. Accordingly, it is dismissed.

NAJMI WAZIRI, J

JULY 09, 2018/acm