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

+ W.P.(CRL) 322/2019 and CrI.M.A. No. 2243/2019

KAMAL TYAGI

..... Petitioner

Through Ms. Neha Kapoor, Advocate

versus

STATE

..... Respondent

Through Mr. Rajesh Mahajan, ASC for the
State with SI Ajay Kumar, P. S. IGI
Airport

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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05.02.2019

Status report has been filed. Affidavit of Deputy Inspector General of Prisons has also been handed over by the Additional Standing Counsel of the State which is taken on record.

On the last date of hearing learned counsel for the petitioner contended that the petitioner was granted parole of two weeks vide order dated 12th December, 2018 passed by Government of NCT on the ground of Barsi of petitioner's grandmother and petitioner was released on 6th January, 2019. Thus, the petitioner was able to attend the Barsi of his grandmother on 13th January, 2019.

In the meantime, the petitioner became eligible for first furlough in the conviction year and thus, he was granted furlough for a period of three weeks vide order dated 3rd January, 2019.

The petitioner wants to avail furlough as there are two

weddings in the family on 9th and 19th February, 2019. However, since one month gap has not elapsed from the date of surrender on 21.01.2019 after availing the parole, the petitioner is not being permitted to be released from prison to avail furlough.

As per the affidavit of the Deputy Inspector General (Prisons), the petitioner cannot be released on furlough for one month in view of provision as laid down in Rule 1212 of Delhi Prison Rules 2018 which reads as under:-

“A convict would be released on parole for a period of maximum eight weeks in minimum two spells in a conviction year. However, the period of release in one spell should not be more than four weeks. There should be one month gap between parole and last furlough availed and vice-versa.”

No doubt in terms of Rule 1212 of Delhi Prison Rules 2018, the prisoner may be entitled for release on furlough/ parole only after one month gap between the last surrender and subsequent release on parole/ furlough availed, however, if in a given case there is some exigency, the petitioner cannot be denied release on parole/furlough immediately after availing the earlier parole/ furlough.

As noted above, the petitioner was granted parole for attending the Barsi of his grandmonther which took place on 13th January, 2019 and now the petitioner wants to avail furlough so as to enable him to attend family functions. As a matter of fact, furlough and parole of the prisoners should be spaced out to avail the exigencies of family situation.

Consequently it is held that Rule 1212 of Delhi Prison Rules 2018 which would be ordinarily applicable but in case of exceptional nature where there are exigencies of situation the parole/furlough granted to the prisoner can be availed even prior to one month gap. Consequently, the Superintendent of Central Jail No. 2, Tihar, New Delhi is directed to release the petitioner on furlough on the same terms and conditions as directed to him vide order dated 03.01.2019 forthwith.

Accordingly, the petition and application are disposed of.

A copy of the order be given *dasti* under signatures of the Court Master to the counsel for the petitioner.

MUKTA GUPTA, J

FEBRUARY 05, 2019/b