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

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Date of Decision : January 23, 2019

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W.P.(CRL) 2828/2018

DEEPENDER KUMAR @ CHOTU

..... Petitioner

Represented by: Mr. Saurabh Kumar, Advocate for
Mr. Pramod Kumar Dubey,
Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Rajesh Mahajan, ASC with Ms.
Purnima Malik, Advocate for Mr. Avi
Singh, ASC for the State with SI
Vinod Kumar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

1. By this petition, the petitioner seeks furlough and also challenges the communication dated 21st August, 2018 whereby his request for release on furlough was declined.
2. The communication declining furlough of the Competent Authority reads as under: -

This is in reference to the captioned subject. In this regard, it is to inform you that Competent Authority has declined the application for grant of 1st Spell of furlough to the convict Deepander Kumar @ Chotu S/o Sh. Narsi Ram as the said convict is undergoing sentence in case under NDPS Act. The convicts under NDPS Act are not entitled for remissions as per Section 32A of NDPS Act, whereas furlough is a kind of

remission granted to convicts. The convict Deepander Kumar @ Chotu S/o Sh. Narsi Ram has not earned any AGCR as required under para 26.1 of Parole/Furlough guidelines 2010 which states as under: -

26.1 “Good conduct in the Prison and should have earned Three Annual Good Conduct Remission and continues to maintain good conduct.”

3. After the parole/furlough guidelines 2010, the Delhi Prison Rules 2018 have come into force which are in force w.e.f. 1st January, 2019, Rule 1224 whereof dealing with furlough provides as under:-

“1224. The following categories of prisoners shall not be eligible for release on furlough:

- i. Prisoners convicted under sedition, terrorist activities and NDPS Act.*
- ii. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime.*
- iii. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report.*
- iv. Convicted foreigners.*

- v. *Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered.*

Note: - (1) Simultaneous furlough to co-accused convicts are ordinarily not permissible. However, when co-accused convicts are family members, simultaneous release may be considered in exceptional circumstances only.

Note: - (2) 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 the Court.”

4. From perusal of the rule of 1224 it is evident that the prisoners who has been convicted for sedition, terrorist activities and under NDPS Act will not be entitled to furlough.
5. Learned counsel for the petitioner states that the petitioner was earlier also granted furlough. A perusal of the nominal roll reveals that though this Court granted furlough to the petitioner, however the parole/furlough guidelines of the Government were not brought to its notice and thus not considered.
6. In 2000 (8) SCC 437 Dadu @ Tulsidas Vs. State of Maharashtra the Supreme Court while dealing with Section 32A of the NDPS Act held it ultra vires only to the extent it takes away the right of the Court to suspend the sentence or grant parole in a given case upholding it to the extent Section 32A takes away the power of the executive to remit or commute the sentence. Supreme Court also noting the distinction between parole and bail held that parole is not a suspension of the sentence, the convict continues to serve the sentence despite grant of parole under the statute or rules and is

released temporarily for a specific purpose. It was held:

“29. Under the circumstances the writ petitions are disposed of by holding that:

- i) Section 32-A does not in any way affect the powers of the authorities to grant parole.*
- ii) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.*
- iii) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment.”*

7. Considering the fact that prisoners who have been convicted for offences punishable under the NDPS Act are not entitled to furlough which is a kind of remission granted as a reward for good conduct unlike parole which can be granted in exigencies of situation as well, this Court finds no ground to grant furlough to the petitioner.

8. Petition is dismissed.

9. Copy of this order be communicated to the petitioner through Superintendent, Tihar Jail.

(MUKTA GUPTA)
JUDGE

JANUARY 23, 2019
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