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

+ **W.P.(CRL) 31/2020**

SHASHI BHUSHAN

..... Petitioner

Through: Mr Samyak Gangwal, Advocate.

versus

STATE

..... Respondent

Through: Ms Kamna Vohra, ASC for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.01.2020

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 15.11.2019, whereby the petitioner's application for furlough had been rejected on the ground that he had not earned three Annual Good Conduct Reports in terms of Paragraph 1223(I) of the Delhi Prison Rules, 2018; since the same is a precondition for grant of any furlough.
2. The learned counsel appearing for the petitioner submits that the said Rule is inapplicable, since the Delhi Prison Rules, 2018 came into effect on 01.01.2019 and the punishment imposed on the petitioner was given by an order dated 29.08.2018. He submits that the said punishment could not be considered for deciding whether the petitioner was entitled to furlough under the said Rules. The said contention is unmerited. There is no dispute that the Delhi Prison Rules, 2018 are applicable prospectively. However, taking into account a convict's past conduct for considering his eligibility for

rewards does not amount to applying the said Rules retrospectively. It is settled law that any statute cannot be called retrospective merely because part of the requisites for its action is drawn from a time antecedent to its passing (See: *The Queen v. The Inhabitants of St. Mary, Whitechapel* (1848) 12 QB 120; *Rao Shiv Bahadur Singh & Ors. v. The State of Vindhya Pradesh: AIR 1953 SC 394*).

3. If the contention of the petitioner is to be accepted, it would mean that only the conduct of the petitioner after 01.01.2019 can be considered for grant of furlough. Plainly, this is unmerited. Furlough is granted as a reward for good conduct and as an incentive to the convicts to maintain discipline. Grant of such reward can be considered only in lines of the Rules as applicable at the time of granting such reward. The fact that a convict's past conduct disentitles the convict for such a reward does not mean that the Rules are being applied retrospectively. Grant of furlough is not a matter of right. Paragraph 1223(I) of the Delhi Prison Rules, 2018 does not suffer from the vice of being an ex-post facto law, as it does not deprive the convicts of any vested right.

4. In view of the above, this Court finds no infirmity with the impugned order dated 15.11.2019.

5. At this stage, learned counsel for the petitioner requests that in view of the urgency, his application for furlough may be considered as an application for parole. This Court finds no impediment in doing so. Accordingly, the respondent is directed to re-consider the petitioner's application for furlough as an application for parole as expeditiously as possible and preferably, within a period of one week from today.

6. The petition is disposed of in the aforesaid terms.
7. Order *dasti* under signatures of the Court Master.

JANUARY 08, 2020
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VIBHU BAKHRU, J