

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

% **Reserved on: 09.05.2023**

Pronounced on: 25.05.2023

+ **W.P.(CRL) 279/2023**

MOHD. SULEMAN

..... Petitioner

Through: Mr. Rohan J. Alva, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Bhandari, ASC for
the State with Mr. Kunal Mittal
and Mr. Saurabh Tanwar,
Advocates and with Insp.
Yogesh Kumar, PS Jama
Maszid.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J

1. By way of this petition filed under Article 226 of the Constitution of India, the petitioner is seeking the following relief:-

“a. Issue a writ in the nature of Certiorari quashing the Order no.F.10(3718433)/CJ/LEGAL/2023/4388 dated 17.01.2023 passed by the Respondent; and

b. Issue a writ in the nature of mandamus directing the respondent to release the petitioner on Ist Spell of Furlough of 03 weeks; or

c. Pass any other order or further orders, which this Hon'ble Court deems fit and proper in the interest of justice.”

2. It is submitted by the learned counsel for the petitioner that petitioner was denied furlough vide impugned order dated 17.01.2023 only on the ground that the petitioner did not surrender when he was released on emergency parole on 11.04.2020 for a period of 8 weeks which was further extended time to time due to COVID-19. It is further submitted that the petitioner kept on calling the jail authorities to know the date of his surrender and he was told that his emergency parole was extended from time to time and no such intimation was given to the petitioner with regard to his date of surrender. It is further submitted that the conduct of the petitioner in jail is satisfactory and he was never punished inside the jail. It is further submitted that necessary requisite for granting furlough is 3 good conduct remissions which the petitioner has already earned. It is further submitted that furlough is allowed even after the conviction in various cases. It is further submitted that petitioner is in judicial custody since 07.03.2008 and has undergone 9 years and 7 months in custody and has earned approximately 2 years of remission. It is further submitted that the petitioner has a family to support and for their subsistence he used to send money by working as “Weaving Sahayak” in the jail.

3. Learned counsel for the petitioner has relied upon the following orders passed by this Court:

- ***Manoj Kumar Singh vs. State (Govt. of NCT of Delhi) in W.P. (CRL) 21/2023***
- ***Ram Sagar @ Sagar vs. State NCT of Delhi in W.P. (CRL) 748/2022***

- *Surender alias Bhola vs. State of G.N.C.T. of Delhi* in W.P. (CRL) 605/2022
- *Sultan @ Rajesh vs. State of GNCT of Delhi* in W.P. (CRL)764/2022
- *Vinod @ Vinoda vs. The State (Govt of N.C.T. Delhi)* in W.P. (CRL) 89/2023
- *Anil Kumar vs. State (GNCT of Delhi)* in W.P. (CRL) 1053/2020

4. On the other hand, It is submitted by learned ASC appearing for the State while vehemently opposing the present petition that when the petitioner was released on emergency parole, he did not surrender on due date and jumped the parole and later surrendered after 10 months and 27 days for which a punishment ticket against him was recorded. It is further submitted that the petitioner was arrested in another case FIR No. 185/2021 under Sections 324/341/34 IPC registered at Police Station Jama Masjid while he was on emergency parole.

5. In the instant case, a bare perusal of the status report filed by the State reveals that the petitioner was released on 11.04.2020 on emergency parole which was extended from time to time due to COVID-19 pandemic till 27.02.2021, however, he did not surrender in jail on due date and jumped the emergency parole, thereafter he surrendered on 24.01.2022. I have also perused the nominal roll dated 04.04.2023 which shows that the petitioner has undergone about 9 years, 7 months and 27 days actual incarceration and he has also earned about 1 year 7 months and 22 days' remission. As far as the contention of learned ASC regarding non surrendering of the

petitioner on time is concerned, the counsel for the petitioner stated that petitioner never had notice of the date on which he was supposed to surrender before the jail authorities.

6. Moreover, no document has been placed by the State to show that the petitioner was informed about his date of surrender and despite that he did not surrender. Further, it has also been pointed out by the learned counsel for the petitioner that the petitioner has three minor children who require care and attention of their father for their upbringing.

7. In ***Manoj Kumar Singh vs. State (Govt. of NCT of Delhi)*** in **W.P. (CRL) 21/2023**, this Court while granting parole to the petitioner has observed that furlough cannot be denied to an accused person perennially when the accused had jumped parole or furlough or committed a crime with earning of last three annual good conduct report.

8. Reliance can be placed on the judgment passed by the Hon'ble Supreme Court in ***Asfaq v. State of Rajasthan, (2017) 15 SCC 55***. The relevant portion is reproduced hereunder:

"19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have

the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behavior shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments."

9. Keeping in view the entire facts and circumstances and the observations made by this Court in **Manoj Kumar Singh** (supra), and also the fact that personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case and in the instant case the petitioner has undergone around 10 years of imprisonment, therefore, I am inclined to release the petitioner on furlough. Accordingly, the petition is allowed and petitioner is granted furlough for a period of 3 weeks on following conditions:

- (i) The Petitioner shall furnish personal bond in the sum of Rs.25,000/- with two sureties in the like amount to the satisfaction of the Jail Superintendent.
- (ii) The petitioner shall provide his mobile phone number to the concerned Jail Superintendent and SHO concerned at the time of release, which shall be kept in working condition at all times;
- (iii) The petitioner shall not leave the NCT of Delhi without the prior permission of this Court and shall reside at the address as per prison records;
- (iv) The petitioner shall present himself before the S.H.O., P.S.: Jama Masjid every third day between 11:00 AM and 11:30 AM to mark his presence. However, he will not be kept waiting longer than an hour for this purpose.
- (v) The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of three weeks from the date of his release.

10. Therefore, the present petition is disposed of accordingly.

11. A copy of this order be sent forthwith to concerned Jail Superintendent and SHO, P.S. Jama Masjid, through electronic mode.

RAJNISH BHATNAGAR, J

MAY 25, 2023/_p