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

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Reserved on: 30.10.2023
Pronounced on: 31.10.2023

+ **W.P.(CRL.) 2836/2023**

GOPI NISHA MALLAH

..... Petitioner

Through: Mr. Faraz Maqbool, DHCLSC

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Anand V. Khatri,
Additional Standing Counsel
(Crl.) for GNCTD/State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for issuance of (i) writ in the nature of certiorari quashing the order no. F.10.(3741956)/CJ/LEGAL/PHQ/2023/55187 dated 04.09.2023 passed by the respondent, and (ii) writ in the nature of Mandamus directing the respondent to release the petitioner on first spell of Furlough for three weeks.

2. The case of the petitioner, in brief, is that he had been confined in Central Jail No. 14, Mandoli, New Delhi and is serving life



sentence, of which he has already served about 9 years and 7 months in custody. It is stated that petitioner had applied to DG (Prisons) for grant of first spell of Furlough for three weeks. However, *vide* impugned order no. F.10.(3741956)/CJ/LEGAL/PHQ/2023/55187 dated 04.09.2023, the same was rejected by the concerned authority. The present petition has been filed seeking quashing of the order dated 04.09.2023 and for grant of Furlough for a period of three weeks on the ground of maintaining social ties with family and friends.

3. Learned counsel for the petitioner argues that the respondent has denied furlough to the petitioner *vide* impugned order dated 04.09.2023 on erroneous grounds and without application of mind. It is argued that the petitioner herein fulfills the criteria as prescribed by the Delhi Prison Rules 2018 for grant of furlough and he has also earned last three Annual Good Conduct Reports. It is also submitted that as per the nominal roll, the conduct of the petitioner has also been satisfactory inside the jail. As regards the observation in the impugned order that the petitioner had once surrendered late by six days when he was granted emergency parole, it is argued by learned counsel that after this incident itself, the respondent had granted emergency parole again to the petitioner and he had surrendered on time. Therefore, it is prayed that present petition be allowed.

4. Learned ASC for the State, on the other hand, argues that considering the nature of offence committed by the petitioner and in view of adverse report of the police, the petitioner should not be released on furlough.



5. This Court has heard arguments addressed by learned counsel for petitioner and learned ASC for the State and has perused the material placed on record.

6. As per nominal roll on record, the petitioner herein had been convicted in case arising out of FIR No. 15/2014, registered at Police Station Bara Hindu Rao, Delhi under Sections 325/363/376(2)(I)&(M) of Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act, 2012. By virtue of order on sentence dated 28.04.2018, the petitioner was sentenced to undergo imprisonment for life. The appeal filed by the petitioner i.e. CRL.A. 595/2018 against his conviction was dismissed by this Court *vide judgment* dated 04.09.2018.

7. This Court notes that in the present case, the petitioner had filed an application before the DG (Prisons) for grant of first spell of furlough for a period of three weeks. However, the same was rejected *vide* order dated 04.09.2023, which reads as under:

“...This is in reference to the application for grant of furlough to convict Gopi Nisha Mallah s/o Jai Ram Mallah.

In this regard, I am directed to inform you that the Competent Authority has considered the application for grant of furlough and same has been declined at this stage in view of nature of crime committed by him, adverse police report, 06 days late surrender on 09.03.2021 after emergency parole...”

8. As per nominal roll, the petitioner has remained in judicial custody for about 09 years and 07 months, with remission earned of about 01 year and 08 months. As per records, the petitioner had



earlier been granted interim bail on two occasions during the course of trial and this Court had also granted him parole for a period of 06 weeks from 18.02.2019 to 12.04.2019, and there is no report of any misuse of liberty of interim bail or parole or any complaint of late surrender. As per records and as observed in the order rejecting furlough to the petitioner, when the petitioner had been released on emergency parole for a period of 08 weeks on 14.04.2020 and which had been extended from time to time, till 03.03.2021, he had surrendered late by 06 days i.e. on 09.03.2021. However, in this regard, it is also crucial to note that the petitioner had again been released on emergency parole from 07.06.2021 till 08.04.2023, and he had surrendered on time before the jail authorities.

9. This Court also notes that the conduct of the petitioner in the jail for last one year as well as the overall jail conduct has always been satisfactory and no misconduct has been reported or major punishment has been awarded to him, except a punishment dated 10.03.2021 which pertains to late surrender by a period of 06 days, which has already been considered by this Court in the preceding paragraph.

10. Further, as per Status Report handed over in the Court by the learned ASC for the State, the concerned SHO has already verified the address of the petitioner where his sister has been residing for last 10 years. Ironically, the concerned SHO in his report on one hand mentions that the behaviour of petitioner is satisfactory, but in the same breadth, also mentions that petitioner can have adverse impact on law on order and security in the area, without assigning any



reasons for recording such an observation. In this Court's opinion, merely because a person has been convicted for committing sexual offences, he cannot be denied benefit of furlough, which he is otherwise eligible for, on such erroneous grounds.

11. Rules 1197 and 1200 of the Delhi Prison Rules, 2018 itself provide insight into the objects which are achieved by releasing a convict on furlough or parole, which read as under:

“1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison.

1200. The objectives of releasing a prisoner on parole and furlough are:

- i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self-confidence,
- iii. To enable him to develop constructive hope and active interest in life,
- iv. To help him remain in touch with the developments in the outside world,
- v. To help him remain physiologically and psychologically healthy,
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and
- vii. To motivate him to maintain good conduct and discipline in the prison...”

12. Thus, while considering the present writ petition for grant of



furlough, the Court remains conscious of the imprisonment awarded to the petitioner and the period of incarceration already undergone by him, coupled with the satisfactory conduct of the petitioner inside the jail and previous record of being released on interim bail and parole and having surrendered on time. In such circumstances, this Court cannot reject the prayer of the petitioner who seeks grant of furlough for maintaining social ties with his friends and family, and accordingly, the present petition is allowed and the impugned order dated 04.09.2023 passed by the respondent is set aside. The petitioner is granted furlough for a period of 21 days, subject to the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- with one surety of the like amount, who shall be a family member of the petitioner, to the satisfaction of the Jail Superintendent.
- b) The petitioner shall furnish a telephone/mobile number to the Jail Superintendent on which he can be contacted, if required.
- c) After his release, he shall also provide his telephone/mobile number to the SHO of the Police Station concerned where the petitioner shall reside, which as per address mentioned in the Memo of Parties will be Police Station Model Town, Delhi.
- d) If the petitioner has a passport, he shall also surrender the same to the Jail Superintendent.
- e) The petitioner shall surrender before the jail authorities on



expiry of the period of his furlough.

f) The period of Furlough shall be counted from the day when the petitioner is released from jail.

13. In above terms, the present writ petition stands disposed of.

14. A copy of this order be sent by the Registry to the Jail Superintendent concerned for information and compliance.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 31, 2023/ns