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

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Date of decision: 17th November, 2023+ **W.P.(CRL) 2771/2022**

SANJAY KUMAR VALMIKI

..... Petitioner

Through: Mr. Faraz Maqbool (DHCLSC) and
Ms. Chinmayi Chatterjee, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Bhandari, ASC for State
with Mr. Kunal Mittal, Mr. Arjit
Sharma and Ms. Rishika, Advocates.
SI Jogender, PS Maurya Enclave.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the order dated 28th October, 2022 passed by the respondent, whereby the application of the petitioner for grant of furlough has been rejected.

2. Brief facts leading to the present petition are set out below:

2.1 The petitioner in the present case was convicted for committing rape and murder of a minor under Sections 302/201/363/376(2)(F) of the Indian Penal Code, 1860 (IPC) in FIR No.226/2011 registered at Police Station Maurya Enclave and was awarded death sentence along with fine.

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2.2 In appeal, the Division Bench of this Court set aside the aforesaid judgment and ordered re-trial of the case. In the re-trial, the petitioner was once again convicted of the aforesaid offences and was awarded imprisonment for life with no remission for a period of 25 years.

2.3 The appeal against the aforesaid judgment was dismissed by this Court on 24th May, 2018.

3 The petitioner filed an application dated 13th September, 2022 for grant of furlough, which was rejected vide impugned order dated 28th October, 2022. The operative part of the impugned order is set out below:

*“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** in view of following reason(s):*

- i) The nature of crime committed by the convict, possibility of committing similar offence cannot be ruled out, he may create law & order problem if released on furlough.*
- ii) Police authority has strongly opposed for grant of furlough.”*

4 The aforesaid impugned order has been challenged by the petitioner by way of the present petition.

5 Counsel for the petitioner does not dispute the fact that the petitioner has been convicted of a heinous and gruesome offence. However, he submits that the nature and gravity of the offence by itself cannot be a ground for denying furlough to the petitioner. Reliance in this regard is placed on the judgment of the Supreme Court in ***Athir v. State of NCT of Delhi***, 2022 SCC OnLine SC 527 as well as judgment of the Division Bench in ***Dinesh Kumar & Ors. v. Govt. of NCT of Delhi***, 2012 (129) DRJ 502 (DB).



6 Counsel for the petitioner further submits that the petitioner has undergone incarceration of around 12 years and that his jail conduct has been satisfactory and no other case is pending against him.

7 *Per contra*, learned ASC appearing on behalf of the State submits that taking into account the gruesome crime for which the petitioner has been convicted, he should not be released on furlough. It is further stated that the grant of furlough is not a matter of right and the same can be denied in the interest of society. In this regard, learned ASC has placed reliance on the extracts of the judgments of the Supreme Court in *State of Gujarat v. Narayan*, 2021 SCC OnLine SC 949 and *Ashfaq v. State of Rajasthan & Ors.*, (2017) 15 SCC 55, as quoted in the judgment of the Supreme Court in *Atbir v. State*, SCC OnLine SC 527, which are set out hereinafter.

8 In the alternative, learned ASC submits that the application of the petitioner for grant of furlough be remanded back to the Director General of Prisons, Tihar for fresh consideration.

9 I have heard the counsels for the parties and perused the material on record.

10 The issue whether a convict who has been awarded imprisonment for life with a stipulation of no remission is entitled to grant of furlough, was considered by the Coordinate Bench of this Court in a batch of two writ petitions, W.P.(Crl.) 2049/2019, being petitioner's own case titled as *Sanjay Kumar Valmiki v. State*, and W.P.(Crl.) 23/2023 titled as *Chandrakant Jha v. State of NCT of Delhi*. In the judgment delivered on 3rd July, 2020 in the said petitions, it was held that a convict who has been awarded sentence for a particular period or imprisonment for life with the stipulation of no remission, is not entitled to furlough.



11 Relying upon the aforesaid judgment, vide order dated 2nd August, 2021 passed in W.P.(CRL) 3345/2019 titled as **Atbir v. State**, the petitioner therein was held not entitled to grant of furlough.

12 It is to be noted that the petitioner, Atbir, was awarded imprisonment for life without parole and remission of the term of imprisonment. Atbir challenged the judgment in **Atbir** (supra) before the Supreme Court and the Supreme Court after analysing its previous judgments including the judgments in **Narayan** (supra) and **Ashfaq** (supra) as well as the Delhi Prison Rules, 2018, set aside the order denying furlough and remanded the matter to Director General of Prisons for fresh consideration. The relevant observations in **Atbir** (supra) relied by both the sides are set out below:

*“28. The principles relating to different provisions dealing with the matter of release of a prisoner by way of bail, furlough and parole have been considered and the distinction has been explained by this Court in several of its decisions. We need not multiply on the authorities but, relevant it would be to take note of the observations and enunciations by this Court in the case of **Asfaq** (supra), where it was observed, inter alia, as under:-*

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14. Furlough, on the other hand, is a brief release from prison. It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.

15. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his



links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

16. This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:

(i) Both parole and furlough are conditional release.

(ii) Parole can be granted in case of short-term imprisonment whereas in furlough it is granted in case of long-term imprisonment.

(iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by the Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society.



(See State of Maharashtra v. Suresh Pandurag Darvakar and State of Haryana v. Mohinder Singh)
(emphasis supplied)

29. Further, in **Narayan (supra)**, this Court has summarised the principles in the following terms:

“24. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. The principles are thus:

(i) Furlough and parole envisage a short-term temporary release from custody;

(ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;

(iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;

(iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough;

(v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.”

(emphasis supplied)

30. Having examined the matter in its totality, we find it difficult to agree with the reasoning in the order impugned and with the contentions that once it has been provided by the Hon'ble President of India that the appellant would remain in prison for whole of the remainder of his natural life without parole and without remission in the term of imprisonment, all his other rights, particularly those emanating from good jail

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conduct, as available in the 2018 Rules stand foreclosed.

32. It has also rightly been pointed out that when furlough is an incentive towards good jail conduct, even if the person is otherwise not to get any remission and has to remain in prison for whole of the remainder of his natural life, that does not, as a corollary, mean that his right to seek furlough is foreclosed. Even if he would spend some time on furlough, that will not come to his aid so as to seek remission because of the fact that he has to remain in prison for whole of the remainder of his natural life.

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37. In our view, in Chandra Kant Jha (supra), the High Court essentially formulated the question in converse and that has resulted in its conclusion against grant of furlough. The Court was of the view that since the convict in question would not get remission, he would not be entitled to furlough. The Court assumed that remission was a prerequisite for furlough. In our view, the entitlement of furlough cannot be decided in the case of the present nature with reference to the question as to whether any remission would be available or not. Even if the appellant would get furlough (of course, on fulfilment of other conditions) that would not result into any remission because whatever be the remission, he has to spend the whole of the life in prison. But that does not debar him from furlough if he is of good jail conduct and fulfils other eligibility requirements.

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43. Thus, looking to the concept of furlough and the reasons for extending this concession to a prisoner lead us to hold that even if a prisoner like the appellant is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, neither the requirements of his maintaining good conduct are whittled down nor the reformatory approach and incentive for good

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conduct cease to exist in his relation. Thus, if he maintains good conduct, furlough cannot be denied as a matter of course.”

13 At this stage, a reference may also be made to the Delhi Prison Rules, 2018 relating to grant of furlough, which are set out below:

“1199. Furlough means release of a prisoner for a short period of time after a gap of certain qualified numbers of years of incarceration by way of motivation for maintaining good conduct and to remain disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence.

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, dd*
- 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”*

14 In light of the judgment of the Supreme Court in *Atbir* (supra) as well



as the Delhi Prison Rules, 2018, it is no longer *res integra* that furlough is an incentive towards good jail conduct and the same can be granted even if the convict is not entitled to any remission and has been awarded imprisonment for life. The Supreme Court goes on to observe that even if a convict is released on furlough, he cannot seek remission as he has been awarded imprisonment for life. The objectives of granting furlough have been enumerated in Rule 1200 of the Delhi Prison Rules, 2018. The whole purpose and intent of granting furlough is based on the reformatory approach and it is considered to be an incentive for maintaining good jail conduct. Furlough not only helps the convict in maintaining links with his family but also helps in his integration with the society.

15 The petitioner, Chandra Kant Jha, challenged the judgment dated 3rd July, 2020 passed by the Coordinate Bench in W.P.(Crl.) 23/2023 titled ***Chandrakant Jha v. State of NCT of Delhi*** by filing a Letter Patents Appeal, being LPA 75/2022 before this Court. Following the judgment of the Supreme Court in ***Atbir*** (supra), the Division Bench of this Court set aside the aforesaid judgment of the Coordinate Bench and the matter was remanded for reconsideration by the Director General of Prisons, Prison Headquarters, Tihar, Delhi.

16 In the present case, there cannot be any dispute with regard to the fact that the petitioner herein was convicted of a gruesome offence of having committed rape and murder of a minor and for the said offence, the petitioner has been awarded imprisonment for life without remission for a period of 25 years along with fine. In light of the legal principles laid down by the Supreme Court in ***Atbir*** (supra), the submission of the learned ASC that the furlough cannot be granted to the petitioner in view of the gruesome



crime committed by the petitioner cannot be accepted. Both Atbir and Chandrakant Jha, were convicted of multiple murders and yet the Supreme Court and the Division Bench of this Court respectively held that they were entitled to furlough.

17 The judgment is *Atbir* (supra) was also followed by this Bench in W.P.(CRL) 2745/2023 titled *Kali Charan @ Kalka Prasad v. State of NCT of Delhi*, wherein the petitioner was convicted of committing rape of a minor under Section 6 of Prevention of Children from Sexual Offences, 2012 and was awarded imprisonment for ten years.

18 In my considered view, only on the basis that the convict has committed a gruesome crime many years ago, it cannot be said that his temporary release on furlough would be against the interest of the society. There cannot be any presumption that the said convict will again commit a similar crime or create law and order problem in the society. There is no gainsaying that the furlough is granted to a convict undergoing long term imprisonment and long term imprisonment is awarded only in cases where gruesome crimes have been committed. In fact, depriving furlough to a convict, who is undergoing long term imprisonment, would be counterproductive to the reformatory approach and would also take away the motivation to maintain good conduct inside the jail.

19 In the alternative, Learned ASC submits that the application of the petitioner for grant of furlough may be remanded to the Director General of Prisons for fresh consideration, as has been done by the Supreme Court in *Atbir* (supra) and the Division Bench of this Court in *Chandrakant Jha* (supra).

20 In the case of *Chandrakant Jha* (supra) and *Atbir* (supra), the

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competent authority had passed an order rejecting the application for grant of furlough before the judgment in *Atbir* (supra) was delivered by the Supreme Court. In the present case, the impugned order rejecting grant of furlough to the petitioner was passed on 28th October, 2022, much after the Supreme Court judgment in *Atbir* (supra). In any event, the Director General of Prisons has passed a reasoned order while rejecting application of the petitioner for grant of furlough. Therefore, no useful purpose will be served by remanding the said application for fresh consideration.

21 As per the nominal roll dated 8th November, 2022, the petitioner has undergone sentence of 11 years and 3 months. Another year has passed by since then. Therefore, the total period of incarceration of the petitioner is around 12 years. A perusal of the nominal roll would also show that the conduct of the petitioner in Jail has been satisfactory and there is no other case pending against the petitioner.

22 Taking into account the aforesaid facts and circumstances, in my considered view, the petitioner is entitled to grant of furlough.

23 Learned ASC submits that the address provided by the petitioner has been found to be incorrect.

24 In view thereof, the petitioner shall furnish fresh address to the respondent within fifteen days, which shall be verified by the respondent within fifteen days thereafter.

25 Subject to the verification of the address of the petitioner, the petitioner shall be released on furlough for a period of two weeks from the date of his release on furnishing a personal bond in the sum of Rs.10,000/- with two sureties in the like amount to the satisfaction of the concerned Jail Superintendent and further subject to the following conditions:

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- i. The petitioner shall not leave the NCT of Delhi without the prior permission of this Court and shall reside at the given address.
- ii. The petitioner shall provide his mobile number(s) to the concerned Jail Superintendent and concerned SHO at the time of release, which shall be kept in a working condition at all times.
- iii. The petitioner shall appear before the SHO, Police Station Maurya Enclave, every third day between 11:00 AM and 11:30 AM to mark his presence. However, he shall not be kept waiting for longer than an hour for this purpose.
- iv. The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of two weeks from the date of his release.

26 The present petition stands disposed of in terms of the above.

27 A copy of this order be sent to the concerned Jail Superintendent and SHO, Police Station Maurya Enclave, through electronic mode for information and compliance.

AMIT BANSAL, J.

NOVEMBER 17, 2023

at

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