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

+ **W.P.(CRL) 293/2024**

MOHD SHEIKH NOOR HUSSAIN

..... Petitioner

Through: Mr. Ashutosh Kuashik and Mr. Uday
Sodhi, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Anand V. Khatri, ASC for the
State with SI Vivek Singh, P.S.
Sarojini Nagar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **29.01.2024**

CRL.M.A. 2645/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The instant petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of petitioner seeking issuance of writ in the nature of certiorari for quashing Order No. F.18/48/2009/PT-1/HG/3625-26 dated 18.12.2023 passed by the respondent and for issuance of writ in the nature of mandamus, directing the respondent to release the petitioner on parole for a period of three months.



4. Issue notice. Mr. Anand V. Khatri, learned ASC accepts notice on behalf of State.
5. Learned counsel ASC on behalf of the State draws this Court's attention to the fact that the petitioner was released on emergency parole, however, he did not surrender on time and later had surrendered himself on 07.07.2022 which is late by 01 year 04 months and 11 days. Therefore, the petition be dismissed.
6. On the other hand, learned counsel for the petitioner states that the competent authority had rejected the application filed by the petitioner for grant of parole on the ground that major penalty had been inflicted on the petitioner herein on the grounds that he had surrendered late i.e., one year four months eleven days on 07.07.2022 though he was to surrender on 27.02.2021. It is stated that the petitioner could not surrender before the concerned authority due to the Covid -19 pandemic as there was general confusion regarding the date of surrender and, therefore, he surrendered late it is not the case of the prosecution that he had to be arrested he had himself surrendered. It is further stated that the rejection order passed by the respondents is contrary to the fundamental principles of law.
7. This Court has heard arguments on behalf of learned counsel for the petitioner as well as learned ASC for the State and has perused the material on record.
8. The application filed by the petitioner for release on furlough was rejected *vide* order dated 18.12.2023, by the respondent/competent authority, on the ground that the petitioner had violated parole granted to him during the Covid – 19 period, since he had surrendered late.



9. While considering the present writ petition for grant of parole, the Court also has to remain conscious of the fact that the petitioner has been awarded rigorous imprisonment for life and that as per the Nominal Roll, the petitioner has been in judicial custody for 19 years and 3 months without remission and 04 years and 05 months with remission. Further, it is pertinent to note that the petitioner has been granted furlough on 12 occasions and parole on 06 occasions and no report of misconduct has been brought to the notice of this Court.

10. However, this Court has also taken note of the arguments addressed by learned counsel for petitioner in this regard, that immediately after the petitioner had been released on furlough in the year 2020, the Covid-19 pandemic had begun and the petitioner had been told by his counsel that he need not surrender as the convicts had been granted emergency parole during the Covid-19 period.

11. This Court cannot overlook the circumstances and the family exigencies that may have arisen in the family of the petitioner. Needless to say, while dealing with an issue relating to grant of Furlough to a convict, the Courts are required to balance the interests of convict as well as of the society. However, the Courts are also required to consider cases, such as present one, with sensitivity and compassion, and an opportunity may be provided to a convict to re-establish social ties.

12. The address of the petitioner has been verified by the Investigating Officer (IO) and the report in this regard is on record.

13. Considering the aforesaid facts and circumstances, this Court is inclined to grant parole to the petitioner for a period of four (04) weeks from the date of his release on the following conditions:



- i. The petitioner shall furnish a personal bond in the sum of Rs.10,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
 - ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM.
 - iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
 - iv. Immediately upon the expiry of period of parole, the petitioner shall surrender before the Jail Superintendent.
 - v. The period of parole shall be counted from the day when the petitioner is released from jail.
14. In above terms, the present petition stands disposed of.
15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2024/zp

Click here to check corrigendum, if any