



2024:DHC:664



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 30.01.2024***+ W.P.(CRL) 312/2024
SULTAN@RAJESH

..... Petitioner

Through: Mr.Zeeshan Diwan, Mr.Ahmed
Faraz, Advts.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Rupali Bandhopadhy, APP
with SI Jaivind Kumar.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 2832/2024 (Exemption)**

1. Allowed, subject to all just exception.

W.P.(CRL) 312/2024

2. This petition has been filed seeking quashing of the order No.F.10(3465048)/CJ/LEGAL/2023/31015 dated 17.05.2023, by which the application filed by the petitioner for grant of furlough has been rejected by the respondent on the following grounds:

"I. He was released on emergency parole on 11.04.2020 to 07.06.2020 and further extended time to time in view COVID-19 and his due date of surrender was fixed for 28.02.2021 but he did not surrender and re-arrested on 08.09.2021 vide DD No.71A/Dated 07.09.2021, u/s 41.1 Cr.P.C., PS-Jamia Nagar, Delhi.



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II. Rule 1224(iii) of Delhi Prison Rules-2018 states that "the prisoner who abscond while released on parole or furlough shall not be eligible to be released on furlough.

III. His application was not recommended by Superintendent Jail."

3. Issue notice.
4. Notice is accepted by Ms.Rupali Bandhopadhyaya, the learned APP for the State.
5. The learned counsel for the petitioner submits that after the purported delay in surrender in the year 2021, the petitioner was later granted furlough by the judgment/order of this Court date 03.06.2022 passed in W.P.(Crl.) 764/2022, wherein again similar grounds were taken by the respondent for refusing furlough to the petitioner, but were not accepted by this Court. He further submits that the petitioner was also granted parole for a period of 45 days vide order dated 19.10.2023 passed by this Court in W.P.(Crl.) 2819/2023. No complaint was made against the petitioner during the period of the above release.
6. I have considered the submissions made by the learned counsel for the petitioner.
7. This Court, vide its judgment dated 03.06.2022 passed in WP(Crl) 764/2022, had rejected the grounds similar to the one given in the Impugned Order, while granting furlough to the petitioner, by observing as under:

"3. I have also seen the nominal roll which shows that the petitioner has undergone about 11 years actual incarceration and he has also earned about 2 years remission; the petitioner was given life imprisonment in case FIR No. 315/2009 under Sectios 302/392 IPC. Nominal



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roll shows that as and when the petitioner was granted furlough, he had surrendered on time except when he was granted emergency parole on 11.04.2020 and the same was extended from time to time but he did not surrender after the expiry of the said period. The petitioner has stated that he never had notice of the date on which he was supposed to surrender before the Jail Authorities. No document has been placed on record by the jail authorities to prove that petitioner was informed about his date of surrender and in spite of that he did not surrender.

4. Keeping in view the above facts and especially the conduct of the petitioner always surrendering on time, except on one occasion, after expiry of the furlough period, I am inclined to quash the order/notice dated 12.10.2021 and to further direct the respondent to release the present petitioner on first spell of furlough of three weeks..."

8. Keeping in view the medical condition of the petitioner, the petitioner was also granted parole by the order dated 19.10.2023, observing as under:

"10. This Court has also considered the nominal roll placed on record. The nominal roll shows that the petitioner was released almost 8-10 times previously on furlough and parole.

11. Learned counsel submits that though the petitioner so far is being administered Radiotherapy and Chemotherapy on regular intervals, however, he submits that it is the aftercare of the petitioner in jail which is main reason for the petitioner's present writ petition.

12. There is no doubt that the after effects/side effects of the Radiotherapy and Chemotherapy are deleterious and debilitating. There are times when the patient is unable to have ordinary food and it could be possible that the petitioner may be



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undergoing nauseous feeling and may be vomiting at times also.

13. This Court is in agreement with the submissions that post Radiotherapy and Chemotherapy the petitioner may actually require bland food. Though this Court has no reason to doubt that the jail hospital may be providing sufficient and correct diet to the petitioner, however, on an overall consideration of the facts, this Court is of the considered opinion that the petitioner can be released on parole for a period of 45 days..."

9. In view of above, the Impugned Order dated 17.05.2023 cannot be sustained. The same is accordingly set aside.

10. The respondent is directed to release the petitioner Sultan@Rajesh on furlough for a period of three weeks from the date of his release on furnishing a personal bond of Rs.10,000/- with one surety of like amount from the family, subject to the satisfaction of the Jail Superintendent and subject to the following conditions:-

- (a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave India without prior permission of the Court concerned;
- (b) He shall report to the jurisdictional police station to append his signature once in 3 days during his parole;
- (c) He shall provide his mobile number(s) to the Jail Superintendent and keep it operational and on his person at all times;
- (d) He shall update his medical condition regularly to the concerned official nominated/appointed by Jail Superintendent in that regard once every 7 days;



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(e) He shall not indulge in criminal activity of any nature whatsoever;

(f) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit.

11. Post Script, I also find merit in the submission of the learned counsel for the petitioner that the same reason is being cited over and over again by the respondent for rejecting the application filed by the petitioner seeking furlough. The said condition has been considered by this Court and has been rejected. This Court has today again by this judgment, rejected the similar ground. It is expected that the respondent shall not use this ground any further to deny furlough or parole to the petitioner, subject to any subsequent conduct of the petitioner giving rise to the said ground to be used again by the respondent.

12. The petition is disposed of in the above terms.

13. A copy of this order be sent to the concerned Jail Superintendent forthwith.

NAVIN CHAWLA, J

JANUARY 30, 2024/Arya/am

Click here to check corrigendum, if any