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

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Date of Decision: 08th February, 2024

+ W.P.(CRL) 377/2024

PURAN SINGH@ VIPIN

..... Petitioner

Through: Mr. Sidharth Yadav, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rahul Tyagi, Additional Standing
Counsel with Ms. Priya Rai, Mr. Sangeet Sibou
and Mr. Jatin, Advocates with SI Shivam Sharma,
PS: Preet Vihar.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking grant of third spell of furlough for a period of two weeks in connection with case FIR No.569/2000 under Sections 364A/34 IPC, registered at PS: Preet Vihar, on account of the birthday of his minor son and to re-establish social and family ties. Petitioner was convicted and sentenced to life imprisonment on 20.03.2012. Criminal Appeal No. 614/2012 filed by the Petitioner challenging his conviction and order on sentence was dismissed by this Court on 21.08.2014.
2. Status report has been handed over by the learned ASC for the State in Court due to paucity of time and is taken on record.



3. Learned counsel for the Petitioner submits that Petitioner has undergone a lengthy trial and long incarceration and has been unable to meet his family for a long time. He, now seeks furlough for two weeks for celebrating the birthday of his son, who turns 12 this year and to meet other family members and friends

4. Learned ASC for the State, *per contra*, adopts a position that Petitioner is not eligible, at this stage, for grant of furlough in view of paragraph 13 of Standing Order No. 1/2019, which provides that an application for grant of subsequent spells of furlough should be made only after a gap of one month from the date of surrender after availing the previous furlough. One month gap can, however, be relaxed by the Competent Authority on the basis of verified, emergent reasons/causes to the satisfaction of the Superintendent. It is stated that Petitioner was released on 27.12.2023 on grant of furlough for a period of 14 days and surrendered on 11.01.2024. Present application for furlough was submitted on 01.02.2024 for taking part in birthday celebrations of his son and to re-establish social ties with family members and the society. Therefore, the Petitioner is ineligible as the time gap between the present application and the date of surrender, after availing the previous furlough, is less than one month. It is further stated that the Delhi Prison Rules, 2018 and various Standing Orders on the subject regulate the grant of furlough and the Jail Authorities are bound to act in consonance thereof.

5. Learned counsel for the Petitioner, *per contra*, places reliance on Rule 1212 of Delhi Prison Rules, 2018 to contend that a convict is entitled to be released on parole for a period of maximum eight weeks in minimum two



spells in a conviction year and further provides that there should be one month gap between parole and last furlough availed and *vice-versa*. The argument is that the embargo of one month gap is only between parole and last furlough availed and *vice-versa* and there is no provision which mandates that there should be a gap of one month between a fresh application for furlough and the date of surrender after availing the last furlough and further it is not open to the Respondent to invoke a Standing Order to deny furlough to the Petitioner, as no Executive Instruction can be enforced, if it is inconsistent with Statutes/Rules/Regulations.

6. Heard the counsel for the Petitioner and learned ASC for the State.

7. This petition filed by the Petitioner for grant of furlough is opposed by the State and it is asseverated that Petitioner is ineligible on account of an embargo in paragraph 13 of the Standing Order No. 1/2019 dated 26.03.2019, issued by Director General Prisons, Delhi. On the other hand, Petitioner places heavy reliance on Rule 1212 of the Delhi Prison Rules, 2018, which have been made in exercise of powers conferred by Section 71 of Delhi Prisons Act, 2000 (Delhi Act No. 2/2002). A perusal of the Standing Order, placed on record by the Respondent reflects that the same was issued pursuant to directions of this Court in the matter of ***Sita Ram v. State*** in W.P. (CRL.) 2552/2018, for streamlining the system for grant of furlough/parole to the convicts and laying down uniform Guidelines. For ready reference, Rule 1212 and paragraph 13 of the Standing Order are extracted hereunder:-

“Delhi Prison Rules

1212. A convict would be released on parole for a period of maximum



eight weeks in minimum two spells in a conviction year. However, the period of release in one spell should not be more than four weeks. There should be one month gap between parole and last furlough availed and vice-versa.

Note:-

(1) If the convict has applied for extension after surrendering from the original parole or his application for parole is pending decision when he surrendered after availing original parole then his case will be considered as fresh case.

(2) Simultaneous parole to co-accused is ordinarily not permissible, however, in exceptional circumstances competent authority may consider for reasons in writing for granting parole to co-accused who are family members."

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"Standing Order No. 01/2019

13. The application for the grant of subsequent spells of furlough should be made only after a gap of one month from the date of surrender after availing the previous furlough. However, one month gap between two furloughs may be relaxed by the Competent Authority on the basis of verified emergent reason/clause to the satisfaction of the Superintendent. If the ground mentioned is related to medical condition of the family member, the submitted documents in reference to the same may be furnished with comment of the concerned SMO of the Jail."

8. Reading of the aforesaid provisions shows that Rule 1212 mandates that there should be one month gap between parole and the last furlough availed and *vice-versa*. It does not provide a pre-condition relating to a time gap between the last furlough availed and an application for subsequent spell of furlough. Therefore, clearly there is no conflict between Rule 1212 and paragraph 13 of the Standing Order, as both operate and occupy distinct and separate fields. It is a settled law that Government can by Administrative Instructions fill up gaps and supplement the Rules so long as the Instructions are not inconsistent with or contrary to the already framed Rules, where the



Rules are silent on a particular point. The Constitution Bench of the Supreme Court in *Sant Ram Sharma v. State of Rajasthan and Others*, AIR 1967 SC 1910, held that Government cannot amend or supersede Statutory Rules by Administrative Instructions but if the Rules are silent on a particular point, gaps can be filled up and Instructions can supplement the Rules to the extent they are not inconsistent. This position of law was reiterated and reaffirmed in *Dhananjay Malik and Others v. State of Uttaranchal and Others*, (2008) 4 SCC 171. In light of this position of law and considering that Rule 1212 does not lay down the eligibility condition for applying for furlough qua time gap, after a convict has availed the previous furlough, paragraph 13 of Standing Order No. 1/2019 is not inconsistent and can supplement the Rules. Admittedly, there is no challenge to paragraph 13 of the Standing Order and it needs no reiteration that this Court cannot be called upon to pass any order outside the scope and ambit of Paragraph 13 of the Standing Order or contrary thereto. Petitioner is ineligible for grant of furlough, at this stage, as the gap between the present application and the date of surrender after availing the previous furlough is less than one month. Thus, no illegality can be found in the stand of the Respondent and the petition is devoid of merit.

9. At this stage, learned counsel for the Petitioner submits that paragraph 13 of the Standing Order itself provides for relaxation of one month gap period at the discretion of the Competent Authority on the basis of verified emergent reasons/causes to the satisfaction of the Superintendent and since Petitioner's application is pending before the Competent Authority, direction be issued to decide the application and grant relaxation. Learned ASC has no



objection to the pending application being decided in accordance with paragraph 13 of the Standing Order.

10. Accordingly, it is directed that the Competent Authority before which the application dated 13.01.2024 made by the Petitioner is pending, shall decide the same within a period of two weeks from today. The order passed on the application will be communicated to the Petitioner within one week thereafter. It is open to the Petitioner to take recourse to appropriate remedies available in law in case of surviving grievance. It is made clear that the dismissal of this petition will not come in the way of the Competent Authority granting relaxation on the condition of one month gap, if Petitioner is otherwise entitled on the grounds set out in the application. It is left open to the Petitioner to submit a fresh application, after the cooling period mentioned in Paragraph 13 expires, in accordance with law.

11. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioner for grant of furlough.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 08, 2024/shivam