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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 29th July, 2024***+ **W.P.(CRL) 450/2023**

PRAMOD MANDAL

.....Petitioner

Through: Mr. Rohan J. Alva, Advocate,
DHCLSC.

versus

THE STATE (GOVT. OF NCT) OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, Ld. ASC for
State along with Ms. Anvita
Bhandari, Ms. Charu Sharma, Mr.
Arjit Sharma and Mr. Vaibhav Vats,
Advocates with W/PSI Akanksha
Chhillar, P.S. Adarsh Nagar.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. A Writ Petition under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. has been filed by the petitioner against the Order dated 17.01.2023 vide which his request for his release on Parole for a period of 4 weeks for re-establishing social and family ties, has been rejected.
2. *Briefly stated*, the petitioner was convicted in FIR No. 225/2012 at



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P.S. Adarsh Nagar under Section 376/377 of the IPC vide Judgment and Order on Sentence dated 25.11.2013 and 28.11.2013 respectively. He has been awarded a sentence of imprisonment for life with fine of Rs.10, 000/- under Section 376(2) (f) IPC and RI for 10 years with fine Rs.5, 000/- under Section 377 IPC. Both the sentences are directed to operate concurrently.

3. The petitioner preferred *Criminal Appeal No.270/2014* before this Court which was *dismissed vide judgment dated 15.01.2019*. Thereafter, the petitioner has filed *SLP (CRL.) Diary No.4689/2022* which is pending before the Apex Court.

4. The petitioner has submitted that he has already undergone 9 years of imprisonment excluding remission, out of the maximum sentence of life that has been awarded to him. He surrendered on 05.09.2021 from Emergency Parole to the Central Jail No.14, Mandoli, Delhi and has maintained a clean and a satisfactory behaviour and is presently working as “*Langar Sahayak*” in the jail.

5. The petitioner had filed his Application seeking Parole from respondent/GNCTD vide Application dispatched through Office Letter No. F.(003714880/CJ/Legal/2022/6559), dated 30.11.2022 to the competent Authority, for grant of Parole for a period of 4 weeks for re-establishing social and family ties. However, the Application has been rejected vide Order dated 17.01.2023 essentially on the ground that the petitioner is not entitled to Parole in view of Rule 1210 sub rule (II) and (IV) of Delhi Prisons Rules, 2018.

6. *Rule 1210 sub rule (II)* provides that in case the prisoner is awarded major punishment for any prison offence then he should have uniformly maintained good behaviour for the last two years from the date of



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Application; and the conduct of the prisoner who has been awarded minor punishment or no punishment for any prison offence should have uniformly observed good behaviour for at least one year from the date of Application. In the present case, the prisoner has been awarded major punishment as per Rule 1271 of Delhi Prison Rules, on 06.09.2021. *Sub Rule IV* further provides that the convict should not have violated any terms and conditions of the Parole or the furlough granted previously.

7. The petitioner had further referred to *Rule 1211 of Delhi Prison Rules, 2018* which provides that the Parole shall not be granted by the competent Authority if he is considered *dangerous or involved in serious prison violence such as assault, outbreak of riot, mutiny or escape or rearrested who absconded while released on Parole or furlough or was found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report.*

8. In the present case, the convict was released on 17.04.2020 for 8 weeks emergency Parole granted by GNCT of Delhi and same was extended from time to time due to Covid-19 Pandemic and his surrender was fixed for 06.03.2021. He jumped the same and surrendered late after six months i.e on 05.09.2021.

9. Further, as per the Report received from the office of DG (Prison), it is stated the petitioner is not eligible for grant of Parole in view of the pendency of the SLP before the Apex Court. The grant of Parole was thus, not recommended and the Application was rejected vide Order dated 17.01.2023.

10. The petitioner has challenged the Rejection Order on the grounds that the respondents have rejected the Parole arbitrarily which has caused



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injustice to the petitioner. Further, the interpretation of *Sub Clause IV* adopted by the Competent Authority is contrary to the provisions of grant of Parole in Delhi Prison Rules, 2018. The competent Authority has also failed to consider that the petitioner was earlier released on 17.04.2020 for 8 weeks on emergency Parole. He was not able to surrender on time because he did not receive any proper intimation about the date of surrender. He voluntarily surrendered when he was released on Parole on previous occasions and was not arrested. The respondent also failed to appreciate that the conduct of the petitioner was good and satisfactory and he has maintained disciplined life inside the jail.

11. The petitioner has relied upon *Naresh vs. State* W.P. (Crl.) No.926/2016 decided on 09.05.2016 to submit that in similar circumstances when the convict had surrendered voluntarily, the Parole was granted. It is further submitted that Rule 1211 of Delhi Prison Rules, 2018 do not bar grant of Parole in special circumstances, to the convict. The petitioner was fully eligible despite which his Parole Application has been wrongly rejected.

12. The learned Counsel has referred to the judgment of *Rajesh Kumar vs. Govt. of NCT of Delhi*, 2011 SCC Online Del 5467; *Vikas Yadav vs. State NCT of Delhi*, 2016 SCC Online Del 3123; *Basant Vallabh vs. State*, 2020, SCC Online Del 723, *Budhi Singh vs. State NCT of Delhi*, 2023 SCC Online Del 3825, *Budhi Singh vs. State NCT of Delhi*, W.P Crl.697/2022; *Pramod Mandal vs. State of NCT of Delhi*, Crl.A No.325/2022-SLP (Crl.) Diary No.4689/2022 and *Kalim Sheikh vs. State (GNCT of Delhi)*, 2024 SCC Online Del 1780, wherein it has been held that reference to High Court in Rule 1211 includes the Appeals pending before the Apex Court.



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13. Learned Prosecutor on behalf of the respondent has contested that the judgment of Naresh Kumar had been delivered prior to framing of Delhi Prison Rules, 2018. Now Rule 1211 had been incorporated the law is well settled that the Executive Authority cannot grant Parole if the Appeal is pending in the High Court. It is, therefore, contested that there is no merit in the present petition, which is liable to be rejected.

14. **Submissions heard.**

15. Way back in 1961, the Apex Court in the case of K.M. Nanavati vs. State of Bombay AIR 1961 SC 112 had held that the suspension of the sentence when the Supreme Court was in seisin of the case, can be granted only by the Supreme Court itself and if in respect of the same period, the Executive were also held to have the power to suspend the sentence, it would mean that both the judiciary and the Executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction, which could not have been intended.

16. There are two kinds of leaves that a convict may enjoy while he is in jail i.e. *Parole or furlough*. The distinction between the two has been explained in Asfaq vs. State of Rajasthan (2017) 15 SCC 55 which reads as under :

“16. [...]

(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 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 Pandurang Darvakar [State of Maharashtra v. Suresh Pandurang Darvakar, (2006) 4 SCC 776: (2006) 2 SCC (Cri) 411] and State of Haryana v. Mohinder Singh [State of Haryana v. Mohinder Singh, (2000) 3 SCC 394: 2000 SCC (Cri) 645].)*

17. From the aforesaid judgment, it is apparent that there is a fundamental difference between parole and furlough. In case of furlough, the sentence is not suspended during the period for which the prisoner is released from furlough; the said period is computed in the term of imprisonment. It does not entail suspension of sentence and passing of an order of such grant either by the Executive or by the High Court, would not amount to derogation of power when Appeal is pending before the Apex Court. Similar view has been taken in the case of Sharad Bhiku Marchande vs. State of Maharashtra, 1990 SCC OnLine Bom 197.

18. Rule 1209 and Note 2 to Rule 1224 of Delhi Prison Rules makes it evident that under both the Rules with regard to consideration of parole or of furlough respectively, if an Appeal has been preferred by the convict and the same is pending before the High Court, then by operation of the statutory mandate the Executive Authorities loses their jurisdiction to grant either



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parole or furlough to the convict and the only remedy available is to approach the High Court to seek appropriate order with respect to the Application for furlough or parole.

19. It is has been contended on behalf of the petitioner that these Rules pertain only to the jurisdiction of the High Court. In the present case, the Appeal is pending before the Apex Court and thus, these Rules are not applicable to the petitioner.

20. The Coordinate bench of this Court in the case of Vikas Yadav vs. State of NCT of Delhi 2016 SCC OnLine Del 3123 decided on 16.05.2016 placed reliance on K.M. Nanavati (Supra) to conclude that there can be no manner of doubt that when a challenge against a sentence awarded to the petitioner, is pending determination before the Supreme Court in a Criminal Appeal, the power of the Executive to consider a representation for Parole made by the petitioner is eclipsed and cannot therefore, be exercised. Similar observations have been made by the Coordinate Bench of this Court in Basant Vallabh vs. State 2020 SCC OnLine Del 723. T

21. These aspects have been considered in detail by the Coordinate Bench in the case of Budhi Singh vs. State of NCT of Delhi, 2023 SCC Online Del 3825 with specific reference to the Rules framed under Delhi Prisons Act, 2018 specifically and it was observed that Note 2 to Rule 1224 prescribes High Court as a Forum for consideration of the Application for furlough, but High Court is prescribed only in the context of Appellate Court. If the Appeal is pending before the Supreme Court, then it is the Supreme Court alone which is the Appellate Court before whom the application would be maintainable. It was observed that *ipso jure* the word *High Court* would mean and include the Apex Court being the appellate Court before which



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the appeal of the convict is pending. It was further observed that the bare perusal of the Rules would reflect that the intention of the framers was that the Application shall not be entertained while the Appeal against conviction is pending and the power to consider such application statutorily vested upon the Appellate Authority, which may be High Court or the Apex Court. Any other interpretation would give rise to an anomalous situation for if any other interpretation is given, it would imply that the High Court would have the jurisdiction even in the matters where an Appeal is pending before the Apex Court. It would result to absurdity which definitely which could not have been intended by the framers of the Rules. It was, therefore, concluded that any Application for furlough or Parole under the Delhi Prison Rules, is maintainable only before the Appellate Court where the Appeal against the conviction, is pending.

22. The law is well defined and it is no longer *res integra* in view of the Delhi Prison Rules, 2018 read with the aforesaid judgments that the application for Parole is not maintainable before this Court since the Appeal against the Order of this Court upholding the conviction, is pending before the Apex Court.

23. There is no merit in the present petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 29, 2024

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