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

+ **W.P.(CRL) 1117/2024**

RAJA RAM @ CHOTA RAJA

..... Petitioner

Through: Mr. Aman Panwar and Mr. Shivam
Singh Baghel, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC with Inspector
Vijay Kumar, PS: Mandawali, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

29.04.2024

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1. This writ petition has been filed by Petitioner Raja Ram @ Chota Raja S/o Late Shri Dhanna Ram under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of a writ in the nature of mandamus, directing the Respondent to release the Petitioner on 1st spell of furlough for a period of three weeks in case FIR No. 254/2008 under Section 302 IPC registered at PS: Mandawali.

2. Petitioner was convicted for offence under Section 302 IPC and was sentenced to life imprisonment with fine of Rs.5,000/- and in default of payment of fine, SI for one month. Crl. A. No.597/2010 against the judgment of conviction and order on sentence was dismissed by this Court vide order dated 31.03.2014. SLP was dismissed by the Supreme Court vide order dated 29.01.2019. Petitioner is currently lodged in Central Jail No.10, Rohini.



3. Status report has been filed on behalf of the State, wherein the address of the Petitioner stands verified and on this score, there is no opposition to the grant of furlough. Learned ASC for the State, relying on the impugned order dated 18.03.2024 opposes the petition on the ground that Petitioner does not fulfil the criteria of Rule 1224(III) of Delhi Prison Rules, 2018. It is urged that Petitioner was released on emergency parole w.e.f. 14.06.2021 but he did not surrender and was re-arrested on 09.07.2021.

4. Learned counsel for the Petitioner *per contra* argues that the impugned order overlooks the fact that this Court has granted furlough to convicts in several cases even when they had not surrendered on time on expiry of the furlough since this bar cannot continue for the remaining sentence of the Petitioner. It is contended that when the Petitioner was released on 23.05.2020 due to Pandemic COVID-19, he was not informed about the date of surrender by the Jail Authority nor was any such information available in the public domain and the non-surrender was an inadvertent error. Petitioner had earlier availed parole three times and on each occasions had surrendered on time. It is further submitted that this Court in W.P. (Crl.) 2285/2023 had vide order dated 25.09.2023 released the Petitioner on parole for four weeks and therefore, his earlier conduct during emergency parole stood condoned.

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

6. The impugned order indicates that the only ground for rejection of the application of the Petitioner for grant of 1st spell of furlough is that he did not surrender on time when he was granted emergency parole in 2021 and had to be re-arrested. There is merit in the contention of the Petitioner that



his application for furlough has been erroneously rejected as this Court has in several cases granted parole/furlough to a convict who had not surrendered on time, observing that the bar of Rules 1211(III)/1224(III) cannot continue for the entire period of sentence. In this context, I may advert to order dated 15.03.2022 passed in ***Sunil v. State, W.P. (Crl.) 2550/2021***. In ***Puran Prasad v. State of NCT of Delhi, W.P. (CRL.) 2452/2023***, decided on 11.12.2023, this Court observed that the bar contained in Rule 1211(III) does not bar this Court from exercising jurisdiction under Article 226 of the Constitution of India, if warranted in a particular case. Moreover, as pointed out by the counsel for the Petitioner, this Court had granted parole to the Petitioner on 25.09.2023 for four weeks and Petitioner had surrendered on time, a fact uncontroverted by the State.

7. Supreme Court in ***Asfaq v. State of Rajasthan and Others, (2017) 15 SCC 55***, made the following observations elucidating the objective of grant of parole in the context of reformative measures:-

“17. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, albeit for (sic short) periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.



18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments."

8. In view of the aforesaid, it is directed that the Petitioner be released on 1st spell of furlough for a period of four weeks from the date of his release, subject to furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent and further subject to following conditions:-



- (1) Petitioner shall not leave the country without prior permission of this Court;
 - (2) He shall provide his mobile number to the SHO of local Police Station and shall keep the same active at all times and any change in the mobile number will only be after prior intimation to the SHO concerned;
 - (3) He shall not indulge in any criminal activity, directly or indirectly, during the period of furlough; and
 - (4) He shall surrender before the concerned Jail Superintendent on expiry of the furlough period.
9. Petition stands allowed and disposed of in the aforesaid terms.
10. Copy of the order shall be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 29, 2024

B.S. Rohella