



\$~8

\*

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

+

**W.P.(CRL) 1682/2023**

SUKHDEV YADAV @ PEHALWAN .....Petitioner

Through: Ms. Neha Kapoor and Mr.  
Kaushal Mehta, Advs.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Rajesh Mahajan, SPP  
with Mr. Ranjeeb Kamal  
Bora and Ms. Jyoti B.,  
Advs.

Ms. Vrinda Bhandari, Ms.  
Pragya Barsaiyan, Ms.  
Anandita Rana and Ms.  
Vanshita Gupta, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**25.11.2024**

%

1. The present petition is filed under Article 226 of the Constitution of India seeking release of the petitioner on first spell of furlough for a period of three weeks.
2. It is stated that the petitioner had applied for grant of first spell of furlough to the office of the Director General of Prison Head Quarter, Tihar on 04.02.2023.
3. The said application was rejected *vide* rejection letter dated 28.04.2023. The relevant portion of the rejection letter reads as under:

*“...the Competent Authority has considered the application for grant of furlough and same has been declined at this stage in view of nature of crime committed and sentence awarded by the convict, victim. party showing the*

**W.P.(CRL) 1682/2023**

**Page 1 of 9**



*apprehension that the convict may abscond to another country, disturb the law and order and may cause irreparable loss to the victims family if he released from the jail.”*

4. Aggrieved by the same, the petitioner has preferred the present writ petition.

5. The learned counsel for the petitioner submits that the petitioner's application for grant of furlough has been rejected in a mechanical manner without appreciating that he has already spent around 20 years in custody.

6. She submits that the petitioner belongs to the poor strata of society and he has four daughter and one son. She submits that while the eldest daughter of the petitioner is married, his other three daughters are of marriageable age and he has to find suitable matches for them.

7. She submits that the petitioner is fully eligible for grant of furlough as per the Delhi Prison Rules, 2018.

8. She further submits that the petitioner has been granted parole by this Hon'ble Court on 30.06.2015 and 21.09.2019 and the petitioner had duly surrendered on time on both occasions. She further emphasises that the petitioner was released on parole in the year 2019 despite the recovery of a prohibited article from him in the year 2017.

9. She submits that there is no other criminal case pending against the petitioner. She further submits that the provision of furlough cannot be construed in a rigid manner as the same will otherwise lose its purpose.

10. *Per contra*, the learned Special Public Prosecutor for the State vehemently opposes the grant of furlough to the petitioner. He submits that the petitioner is asking furlough for social ties and there is no emergent circumstance or urgency to grant



furlough at this stage.

11. He submits that this Court, in the appeals preferred by the accused persons against their conviction and sentence, had enhanced the sentence of the petitioner from life imprisonment without remission for fourteen years to twenty years without remission and twenty-five years without remission for the co-convicts, after considering the exceptional facts in the present case.

12. He submits that the judgment of this Court, in the appeals preferred by the accused persons, records how they had played with the system by pressurizing witnesses, tampering records, doctoring evidence and even suborning prosecutors.

13. He submits that this Court by order dated 04.12.2020 had released the petitioner on custody parole after considering that the witness–Ajay Katara has grave enmity with the DP Yadav gang and the petitioner is a close associate of DP Yadav. He submits that the same counsel have been seen representing DP Yadav and the petitioner, which shows the continued association between the two.

14. He submits that the complainant and vulnerable witness–Ajay Katara have been provided security by the police because of this case and the same has been recently enhanced as well.

15. I have heard the learned counsel and perused the record.

16. In the present case, it is argued on behalf of the petitioner that he had been enlarged on parole in the years 2015 and 2019 respectively and he had not misused the liberty.

17. On the contrary, the learned Special Public Prosecutor has emphasised that pursuant to the petitioner's release on parole, this Court, by order dated 04.12.2020, had deemed it fit to only



grant custody parole to the petitioner for his daughter's marriage after considering the enmity between DP Yadav and Respondent No.3 and that the security of Respondent No.3 had been enhanced by the Hon'ble Apex Court in the year 2019. It was also noted that the petitioner is a close associate of DP Yadav.

18. It is trite law that the considerations for grant of parole and furlough are different. The Hon'ble Apex Court in the case of ***Asfaq v. State of Rajasthan : (2017) 15 SCC 55*** has emphasised the difference between parole and furlough and discussed the factors to be kept in mind while considering whether parole or furlough is to be granted. The relevant portion of the judgment is reproduced hereunder:

*“16. This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:*

- (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].)*

xxx



*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.***

(emphasis supplied)

19. In the case of ***State of Gujarat v. Narayan : (2021) 20 SCC 304***, the Hon'ble Apex Court had formulated the principles that govern grant of parole and furlough and observed as under:

*“24. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. The principles are thus:*

*24.1. Furlough and parole envisage a short-term temporary release from custody.*



*24.2. While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason.*

*24.3. The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society.*

*24.4. Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough.*

*24.5. The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.”*

(emphasis supplied)

20. Thus, while the relief of furlough provides for a humanistic approach towards convicts and it is meant to break the monotony of imprisonment, however, the same is discretionary in nature and it can be denied in public interest.

21. The petitioner has been convicted for murder in a case of honour killing. It is pointed out that despite the transfer of the matter to Delhi, all witnesses, including, the police officials, turned hostile except the complainant and one eye witness-Ajay Katara.

22. The learned Special Public Prosecutor has taken this Court through various parts of the judgment and order on sentence passed by this Court in the appeals preferred by the accused persons. He has specifically emphasised the observation of the Court in regard to the petitioner that he had compelled a second trial by absconding from justice for over three years with the intention of exhausting the witnesses, prosecutor and the complainant.

23. It is expressed that there are serious apprehensions in relation to threat to life and liberty of the complainant and vulnerable witness–Respondent No.3.

24. While it is not disputed that the petitioner did not misuse



his liberty when he was released on parole on two occasions, however, it cannot be ignored that this Court had subsequently only granted custody parole to the petitioner after taking into consideration the threat to Respondent No.3.

25. It is also relevant to note that parole is meant for a specific purpose and furlough is not an absolute right. The findings of this Court as made in the order of sentence and judgment of conviction in relation to the conduct of the petitioner are serious in nature.

26. Rule 1235 of the Delhi Prison Rules, 2018 provides that the authority has to pass a speaking order if it is rejecting the application for furlough. The same reads as under:

*“While disposing of an application for parole or furlough, the competent authority will assess the behavior and trustworthiness of the convict on the one hand as well as any adverse repercussions, which may exist if parole or furlough is granted. The authority will act fairly and state reasons if the application is rejected.”*

27. The same makes it clear that the authority has to take into account the adverse repercussions of granting furlough. The right of a prisoner to seek furlough has to be balanced with the larger interest of society. While it has been held in a number of judgments that grant of furlough is reflective of the reformatory theory of sentencing, however, serious apprehensions have been raised by the prosecution against grant of furlough to the petitioner.

28. It has been brought to the notice of this Court that the Hon'ble Apex Court has observed in a separate proceedings this year that there have been attempts to brazenly falsely implicate Respondent No.3 as he was the star witness in the case which led to the conviction of the petitioner.



29. In the case of ***Krishan Lal v. State of Rajasthan and Another : (2013) 11 SCC 395***, the petitioner was not given the benefit of parole despite the fact that he was released on parole on two earlier occasions and nothing adverse was reported. The Hon'ble Apex Court noted that pursuant to the release of the petitioner therein on parole, the sentence of the petitioner was modified apprehending imminent danger to the life of the complainant and his family in future. The petitioner therein was sentenced to undergo imprisonment for the rest of his life and it was held that he shall not be entitled for any commutation or any pre-mature release.

30. In the present case also, the petitioner has been sentenced to undergo life imprisonment without remission for twenty years. Even though the period of release during the furlough does not amount to the remission, however, it cannot be denied that the stringent punishment was awarded disallowing remission for twenty years keeping note of the peculiar facts of the case and apprehension of threat to life of the complainant and the witness and the manner in which the accused were found to have played with the system by pressurising the witnesses, tampering records, doctoring evidence and suborning prosecutors. The petitioner was found to be closely associated with the other accused persons involved in honour killing.

31. Considering the serious apprehensions in regard to threat to life and liberty of the complainant and the witnesses, the security has also been provided to them, which was enhanced by the order of the Hon'ble Apex Court.

32. In view of the same, considering the totality of circumstances, in the opinion of this Court, granting furlough to



the petitioner will not be in the interest of public.

33. The present petition is dismissed in the aforesaid terms.

**AMIT MAHAJAN, J**

**NOVEMBER 25, 2024**