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

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Reserved on: 29.02.2024

Pronounced on: 19.03.2024

+ **W.P.(CRL) 2556/2023**

JAGBIR SINGH @ TONY

..... Petitioner

Through: Mr. Vaibhav Jain, Advocate

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Rahul Tyagi, ASC for the
State with Ms. Priya Rai, Mr.
Sangeet Sibou and Mr. Jatin,
Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), has been filed on behalf of the petitioner seeking issuance of writ in the nature of mandamus directing the respondent to release the petitioner on furlough for a period of three weeks.

2. The petitioner is presently confined in Central Jail No. 5, Tihar, Delhi. He was convicted under Sections 363/364A/120B/34 of the



Indian Penal Code, 1860 ('IPC') in case arising out of FIR No. 83/2005, registered at Police Station Sultan Puri, Delhi and vide order on sentence dated 26.04.2011, he was sentenced to undergo life imprisonment for by the learned Additional Sessions Judge, North West, Rohini Courts, Delhi. His appeal against conviction i.e., CRL.A. 1439/2011 was dismissed by this Court *vide* judgment dated 20.07.2012.

3. Learned counsel appearing on behalf of the petitioner argues that the petitioner is challenging the order dated 04.08.2023 passed by the respondents whereby the application for grant of furlough filed by the petitioner has been rejected. It is submitted that petitioner had approached the respondents for grant of furlough for three weeks *vide* his application dated 16.01.2023. Thereafter, after a lapse of about six months, when no decision was taken by the competent authority, the petitioner had filed a writ petition before this Court for necessary directions to the authorities. *Vide* order dated 31.07.2023, this Court while disposing of the earlier writ petition had directed the respondents herein to dispose of the application filed by the petitioner within two weeks from the date of passing of the said order. It is argued that the competent authorities have failed to appreciate that as per Rule 1223 of the Delhi Prison Rules, 2018, the petitioner is eligible for grant of furlough as he has maintained good conduct and has earned last three annual good conduct report (AGCR) and has continued to maintain the good conduct. It is further stated that the jail



authorities have wrongly applied Rule 1224(iii) of the Delhi Prison Rules, 2018 in the present case which bars the grant of furlough to a prisoner if he had absconded while on parole or furlough earlier and if had been re-arrested, as the above rule is to be read conjointly with Rule 1223 of the Delhi Prison Rule, 2018 and cannot be a perpetual bar against grant of furlough to such prisoners. It is also stated that since 2019 i.e., from the re-arrest of the petitioner till date, the petitioner has remained continuously in jail for four years, and during the said period, the petitioner has maintained good conduct in jail and no punishment has been awarded to him.

4. It is further submitted that the petitioner's family comprises of three sons and out of those two are married and one is unmarried and two daughters are already married and living in her matrimonial home. It is stated that the wife of the petitioner had passed away in the year 2018. It is also stated that the petitioner was released on furlough in the year 2013, when his wife was ill and he had the responsibility of his family members who were solely dependent upon the petitioner for their livelihood. It is further stated that petitioner was also going through the stage of mental shock on account of sudden demise of his mother, ill-health condition of his wife, responsibility of children and poor family condition. It is stated that the applicant is the only elder left in the family who has the responsibility on his shoulder of his young son who is unmarried and to find a suitable bride for his young



son aged about 24 years. Therefore, it is prayed that present petition be allowed and petitioner be released on furlough.

5. *Per contra*, learned ASC for the State opposes the present application and submits that the rejection order passed by the competent authority is correct since the petitioner had been granted parole in the year 2013, however, he had jumped the parole and absconded and could be re-arrested only after 6 years, on 26.12.2019. It is further submitted that if the petitioner is released on furlough, he is likely to jump the same and considering that same, the instant petition for grant of furlough be rejected.

6. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned ASC for the State and has perused the material available on record.

7. In the present case, the application filed by the petitioner for release on furlough was rejected *vide* order dated 04.08.2023, by the respondent/competent authority, on the following one ground:

“1. He was granted parole by the Hon’ble Court of Delhi for a period of one month vide order dated 24.09.2013 in W.P. (Crl) no. 1570/2013. The said convict was released on parole w.e.f. 12.10.2013 to 12.11.2013 but he did not surrender after the expiry of parole period. He was re-arrested on 26.12.2019 by the U.P. police...”.

8. Thus, the application for grant of furlough filed by the petitioner has been rejected on the ground that he had not surrendered after he was granted parole by this Court in the year 2013 and had



been re-arrested in the year 2019.

9. While adjudicating the present writ petition for grant of furlough, this Court is also conscious of the fact that the petitioner has been awarded rigorous imprisonment for life and that as per the Nominal Roll, he has already remained in incarceration for about 12 years and 11 months as on date, excluding the remission of about 02 years 02 months. As regards the jail conduct of the petitioner for last one year, the same has been reported as satisfactory.

10. This Court has also gone through the certificates of appreciation granted to the petitioner by the respondents on 15.08.2020, 26.01.2021, 26.01.2022, 15.08.2022 and 26.01.2023. The same are extracted hereunder for reference:





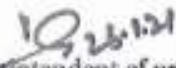
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**CERTIFICATE OF APPRECIATION**

This certificate is awarded to Jagbir S/o Satya Ram in recognition of his **Excellent Work & Good Conduct** as **Lungar Sahayak** in Central Jail No-05 on the occasion of Republic Day, 2021.

Date: 26th January 2021
Place: Tihar, New Delhi


Superintendent of prison
Central Jail No-05
Tihar, New Delhi



W.P.(CRL)-2556/2023

CENTRAL JAIL NO-05, TIHAR, NEW DELHI-64 27

**CERTIFICATE OF APPRECIATION**

This certificate is awarded to Jagbir S/o Satya Ram in recognition of Excellent Work & Good Conduct working as **Lungar Sahayak** in Central Jail No-05 on the occasion of Republic Day, 2022.

Date: 26th January 2022
Place: Tihar, New Delhi


Superintendent of prison
Central Jail No-05
Tihar, New Delhi

W.P.(CRL)-2556/2023

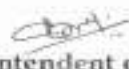
CENTRAL JAIL NO-05, TIHAR, NEW DELHI 28

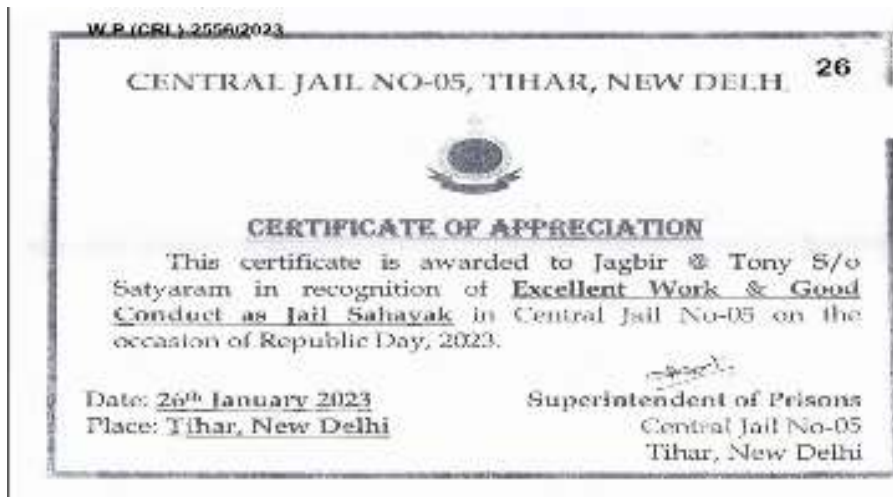

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**CERTIFICATE OF APPRECIATION**

This certificate is awarded to Jagbir @ Tony S/o Satyaram in recognition of **Excellent Work & Good Conduct** as **Lunger Munshi** in Central Jail No-05 on the occasion of Independence Day, 2022.

Date: 15th August 2022
Place: Tihar, New Delhi


Superintendent of Prisons
Central Jail No-05
Tihar, New Delhi



11. This Court has also gone through the Delhi Prison Rules, 2018. Rule 1197 and 1200 provide insight as to what objects are achieved by releasing a convict on parole. The said rules read as under:

“1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison.

1200. The objectives of releasing a prisoner on parole and furlough are:

- i.) To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self-confidence,
- iii. To enable him to develop constructive hope and active interest in life,
- iv. To help him remain in touch with the developments in the outside world,



- v. To help him remain physiologically and psychologically healthy,
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and vii. To motivate him to maintain good conduct and discipline in the prison...”

12. Further, Rule 1223 provides criteria in which a prisoner can be released on furlough. The said rule reads as under:

“1223. In order to be eligible to obtain furlough, the prisoner must fulfil the following criteria: -

- i. Good conduct in the prison and should have earned rewards in last 3 Annual good conduct report and continues to maintain good conduct.
- ii. The prisoner should not be a habitual offender.
- iii. The prisoner should be a citizen of India.”

13. Therefore, as per Rule 1223 of the Delhi Prison Rules, 2018 the petitioner needs three *Annual Good Conduct reports*. It is a matter of record that the petitioner in the present case has maintained good conduct and has also received appreciation certificates by the jail authorities.

14. This Court cannot ignore the fact that furlough is an incentive or reward towards good conduct in the prison. The reformative approach of criminal law encompasses recognizing and incentivizing the good conduct of prisoners. However, it is concerning when orders of disapproval or denial of furlough or parole are passed without appreciating all the facts and circumstances including the instances where a prisoner has been awarded certificates of appreciation by the jail authorities themselves, indicating commendable conduct.



15. Granting parole or furlough to prisoners not only acknowledges their efforts towards rehabilitation, but also affords them with the opportunity to re-integrate into society in a constructive manner. Therefore, denying this opportunity solely based on their past conduct would undermine the very purpose of the reformatory approach of criminal law, which seeks to promote rehabilitation and reintegration.

16. Considering the aforesaid facts and circumstances, this Court is inclined to grant furlough to the petitioner for a period of three weeks from the date of his release on the following conditions:

- i. The petitioner shall furnish a personal bond in the sum of Rs.10,000/- with one surety of the like amount who shall be a family member, to the satisfaction of the Jail Superintendent.
- ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM during the period of furlough.
- iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
- iv. Immediately upon the expiry of period of furlough, the petitioner shall surrender before the Jail Superintendent.



- v. The period of furlough shall be counted from the day when the petitioner is released from jail.
17. In above terms, the present writ petition stands disposed of.
18. A copy of this order be sent by the Registry to the Jail Superintendent concerned.
19. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 19, 2024/ns