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

+ **W.P.(CRL) 1828/2024**

VIKAS SIDHU

.....Petitioner

Through: **Mr. Siddharth Yadav, Advocate.**

versus

STATE (NCT OF DELHI)

.....Respondent

Through: **Mr. Yasir Rauf Ansari, ASC (Crl.) for
the State**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **06.12.2024**

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of writ in the nature of Certiorari for quashing of order dated 16.11.2023 passed by the Competent Authority and also for issuance of writ in the nature of Mandamus directing the respondent to grant three spells of furlough to petitioner in the current conviction year, in FIR No. 34/2003 under Sections 302/364-A/201/34 IPC at P.S. Ashok Vihar, Delhi.

2. Vide judgement dated 13.11.2017, the petitioner came to be convicted under Sections 302/364A/201/34 IPC. Vide order on sentence dated 23.12.2017, he was sentenced to undergo rigorous imprisonment for life with a condition that he would not be entitled for parole, furlough and remission for the first 30 years of imprisonment. The petitioner preferred an appeal being Crl. Appeal No. 360/2018 which came to be dismissed by this Court on 31.10.2018.



Aggrieved by said dismissal, the petitioner approached Supreme Court in Crl. Appeal No. 2276/2022, and vide order dated 21.04.2023, Supreme Court modified the sentence awarded to him to minimum 20 years of actual imprisonment. It was also clarified by the Supreme Court vide order dated 17.07.2023 that the petitioner's entitlement to seek furlough and parole shall be considered on own merits and on application of concerned jail manual and rules.

3. Subsequent to the Supreme Court decision, the petitioner applied for and was granted 1st spell of furlough by the Competent Authority vide order F.10(3744018)/CJ/Legal/2023/51766 dated 21.08.2024 which was availed by the petitioner from 30.08.2023 to 19.09.2023. Thereafter, the petitioner submitted an application dated 30.09.2023 for clarification regarding his eligibility for 2nd spell of furlough. The Competent Authority, vide impugned order dated 16.11.2023, citing Rule-1225 of the Delhi Prison Rules 2018 (hereinafter referred to as 'DPR, 2018'), held that since appeal of the petitioner came to be decided on 21.04.2023, he would be eligible for more than one furlough only in his second conviction year, i.e. after 21.04.2024.

4. Learned counsel for the petitioner submits that the Competent Authority has committed an error in holding that the conviction year would apply from 21.04.2023, when the appeal was decided by the Supreme Court and not from 23.12.2017, when the petitioner was originally sentenced by the Trial Court. He further submits that as per Rule 780 of the DPR, 2018, when the Appellate Court modifies the sentence, it is counted from the first day of imprisonment under the original sentence, unless specifically directed. Therefore, it is argued that when the sentence of the petitioner was



modified and the condition of no remission was removed, the same would also naturally apply from the first day of the original sentence. Learned counsel for the petitioner also contends that Rule 1225 (iii) speaks of the ‘first year of eligibility’ and the eligibility for furlough is clearly stated in Rule 1220 and no separate provision for eligibility has been made for convicts with modified sentences. Lastly, it is submitted that the petitioner has already undergone more than 19 years of actual sentence and may be granted three spells of furlough in the current conviction year.

5. Learned ASC of the State has opposed the present petition and submits that the Competent Authority has rightly stated in the impugned order that the petitioner would be eligible for furlough from 21.04.2023 onwards since that is when his appeal finally came to be decided as the furlough could not have been granted while the appeal was pending. It is further submitted that since the Supreme Court has decided the appeal on merits, the doctrine of merger would apply and the modification in the sentence would be prospective in application. Learned ASC contends that as per Rule- 1225 (ii) DPR, only two spells of furlough can be granted in the second convict year of eligibility, and hence, the petitioner is not eligible for three spells of furlough.

6. I have heard learned counsel for the parties and gone through the records.

7. At the outset, the impugned order wrongly states that the appeal of the petitioner was decided by the High Court on 21.04.2023. In fact, this Court had already dismissed the appeal back in 31.10.2018 and it was the Supreme Court which had decided the appeal on 21.04.2023. The bar to grant furlough during pendency of appeal as laid down in Note 2 of Rule 1224



only applies when the appeal is pending before High Court. This bar would not apply in the present case. The reasoning given in the impugned order is faulty in that respect.

8. Pertinently, the entire dispute in the present case hinges on the question as to whether the date for calculating eligibility for furlough would be from the date of the original order on sentence passed by the trial court or from the date when the appeal finally gets decided. It would be beneficial to first analyse the relevant rules of DPR, 2018 applicable to the present case. Rule 1220 defines the eligibility of a convict for grant of furlough. It reads as follows:-

“1220. A prisoner who is sentenced to 5 years or more of rigorous imprisonment and has undergone 3 years imprisonment after conviction with unblemished record become eligible for grant of furlough.”

9. Thus, normally, a prisoner sentenced to rigorous imprisonment of 5 years or more becomes eligible once he has undergone 3 years imprisonment after conviction with unblemished record. Rule 1223 is also relevant for eligibility, which reads:-

“1223. In order to be eligible to obtain furlough, the prisoner must fulfill 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.”

10. Since the petitioner has been convicted of murder after kidnapping for ransom, certain additional restrictions would apply to his application for furlough which are enumerated in Rule 1225 which reads as under:-

“1225. That the prisoners convicted of murder after rape, under POCSO Act, convicted for multiple murders whether in single case or several cases, Dacoity with murder and murder after kidnapping for ransom, may be considered by the competent authority on the following parameters:-



- (i) Deputy Inspector General (Range) of prisons shall put specific recommendation for considering the said case.*
- (ii) Social Welfare/ Probation officer's report/ recommendation shall be considered while deciding such furlough application.*
- (iii) Subject to the conditions/rules mentioned in Rule 1221 to Rule 1223 above, the spell of furlough for such category would be as follows:*
 - (a). only one spell of 3 weeks in first year of eligibility.*
 - (b) only two spells of furlough, one for 3 weeks and other for 2 weeks in the second convict year of eligibility.*
 - (c) Three spells of furlough like all other convicts in the subsequent years."*

11. Thus, for the first two years of eligibility, the petitioner would be restricted to one spell and two spells of furlough respectively.

As per the Competent Authority, the years of eligibility would begin once the appeal in the matter has been finally decided. Since the learned ASC has put forth an argument that the doctrine of merger would be applicable in such cases where the sentence is modified, it would be meaningful to discuss the doctrine in brief.

12. The doctrine of merger finds its origins in the common law system. It is based on the principles of judicial propriety and hierarchy. It states that when there exists a provision for appeal against an order of a lower forum, and this option is exercised, the decision of the lower forum merges with the decision of the appellate forum and it is the decree or order of the appellate forum which has the binding force of law. However, this doctrine is not unrestricted or all-encompassing in scope and its application would often be guided by the nature of jurisdiction as well as that of the subject matter under challenge. The Supreme Court in the case of Kunhayammed v. State of Kerala, reported as **(2000) 6 SCC 359** held as under:-

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an



inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

13. In Kunhayammed (Supra), it was held that once special leave to appeal has been granted by the Supreme Court, any order passed thereafter would become an appellate order and the doctrine of merger would be applicable in such case. It was held that:-

“41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.”

14. The Supreme Court in the case of Gojer Bros. (P) Ltd. v. Ratan Lal Singh, reported as (1974) 2 SCC 453, while referring to its earlier decision



in Pilot U.J.S. Chopra v. State of Bombay, reported as **1955 SCC OnLine SC 57** held that:-

“24. The principle that the decree of the trial court merges in the decree of the appellate court was held to be applicable in U.J.S. Chopra v. State of Bombay [AIR 1955 SC 633 : (1955) 2 SCR 94] to orders passed in criminal proceedings. In that case the High Court dismissed summarily an appeal filed by an accused against his conviction and sentence. Thereafter, the State of Bombay filed an application in the High Court for enhancement of the sentence. While holding that the summary dismissal of the appeal preferred by the accused did not preclude him from taking advantage of the provisions of Section 439(6) of the Code of Criminal Procedure and showing cause against his conviction when he was subsequently called upon to show cause why the sentence imposed on him should not be enhanced, Bhagwati and Imam, JJ. observed:

“A judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing in the presence of both the parties ... would replace the judgment of the lower Court, thus constituting the judgment of the High Court the only final judgment to be executed in accordance with law by the Court below.” (pp. 133-134).

Das, J. agreed with the conclusion of the majority as regards the right of the accused to challenge the conviction under Section 439(6) but he went a step further and said that there is a merger or replacement of the judgment of the lower court whenever the High Court disposed of the appeal or revision and that “it makes no difference whether the dismissal is summary or otherwise” (p. 118).”

15. Furlough is a conditional release from prison given in cases of long-term imprisonment, given to convicts to deal with personal matters and maintain links in society. In Asfaq v. State of Rajasthan, reported as **(2017) 15 SCC 55**, Supreme Court had succinctly described the need for furlough as under:-

“14. Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.



15. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.”

16. In the case of Atbir v. State (NCT of Delhi), reported as **(2022) 13 SCC 96**, Supreme Court held that furlough cannot be denied as a matter of course even in cases where sentence of life imprisonment without remission has been awarded. It was held that:-

“22. It has also rightly been pointed out that when furlough is an incentive towards good jail conduct, even if the person is otherwise not to get any remission and has to remain in prison for whole of the remainder of his natural life, that does not, as a corollary, mean that his right to seek furlough is foreclosed. Even if he would spend some time on furlough, that will not come to his aid so as to seek remission because of the fact that he has to remain in prison for whole of the remainder of his natural life.

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33. Thus, looking to the concept of furlough and the reasons for extending this concession to a prisoner lead us to hold that even if a prisoner like the appellant is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, neither the requirements of his maintaining good conduct are whittled down nor the reformatory approach and incentive for good conduct cease to exist in his relation. Thus, if he maintains good conduct, furlough cannot be denied as a matter of course.”

17. In the present case, the Trial Court convicted the petitioner on 13.11.2017. He was sentenced to rigorous imprisonment for life with a condition that he would not be entitled for parole, furlough and remission for 30 years of imprisonment vide order on sentence dated 23.12.2017. The



appeal preferred by the petitioner was dismissed by this Court on 31.10.2018. Finally, the petitioner approached Supreme Court which modified the sentence awarded to that of a minimum 20 years of actual imprisonment vide order dated 21.04.2023. No doubt the doctrine of merger would be applicable in this case, and it is the sentence which has been awarded by the Supreme Court which would finally be carried out and the sentence awarded by the Trial Court would be merged with it. However, the doctrine of merger cannot be so enlarged to claim that the sentence of the petitioner, for the purpose of eligibility for furlough would be counted from the date of Supreme Court decision and not from the date of the initial sentence.

18. As discussed above, the three year period of imprisonment defined in Rule 1220 would be counted from the date of conviction. This conviction has to be the initial conviction and sentencing. No rule has been shown which lays down a different method of computing eligibility in cases where the sentence is later modified by appellate Courts. To the contrary, as per Rule 780 of the DPR, 2018, when an appellate Court modifies the sentence, the sentence, unless specifically directed, is counted from the first day of imprisonment under the original sentence. This rule is being reproduced hereunder:-

“780. When an Appellate Court simply modifies sentence passed by a lower court without change of section, or when an appellate court passes a new sentence by changing the conviction section or the punishment section or otherwise, the sentence finally passed shall count, unless otherwise specially directed, from the first day of imprisonment under the original sentence.”



19. This would lead credence to the argument of the petitioner that a modification in sentence would have its effect from the date of initial sentencing. The petitioner was convicted on 13.11.2017 and sentenced on 23.12.2017. Earlier, the sentence explicitly barred the grant of furlough to the petitioner. This bar was subsequently removed by the Supreme Court on 21.04.2023. When two interpretations are possible, the interpretation which is more beneficial to the convict should be preferred.

20. Accordingly, the benefit of removal of bar on furlough would accrue to the petitioner from the time of his initial conviction, i.e. 23.12.2017. Keeping in mind Rule 1225, the petitioner has become eligible for grant of three spells of furlough with effect from 23.12.2020. The petitioner would be eligible for grant of three spells of furlough in the current conviction year from 23.12.2023 to 23.12.2024.

21. In view of the above discussion, the petitioner is directed to be released on furlough for a period of two weeks, subject to him furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Trial Court/Judicial Magistrate/Link Judicial Magistrate subject to the following conditions:

- (i) Petitioner shall report to the SHO of the concerned police station once a week on every Monday during the period of furlough.
- (ii) Petitioner shall furnish his telephone number to the SHO of the concerned police station, which he will keep operational at all times.
- (iii) Petitioner shall surrender before the Jail Authorities at the expiry of the period of furlough.



22. Writ petition is disposed of in above terms.
23. Let a copy of this order be communicated to the concerned Jail Superintendent for information and compliance.

MANOJ KUMAR OHRI, J

DECEMBER 6, 2024

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