



2024:DHC:8144



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 22nd October, 2024**
+ **W.P.(CRL) 1924/2024**
SACHINPetitioner

Through: Mr. Shannu Baghel, Mr. Sudhir
Kumar, Mr. Vivek Kumar, Mr.
Ganpat Ram and Mr. Yogesh Luhera,
Advocates.

versus
STATE NCT OF DELHIRespondent
Through: Ms. Nandita Rao, ASC (Civil) for
State along with SI Ajit Krishna

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC' hereinafter) (now Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023) seeking issuance of the writ of mandamus or certiorari to direct the respondent authority to consider the first spell of the furlough instead of second furlough for the period of two weeks.
2. The petitioner in the present case is a convict under Section 302, 364 and 201 Indian Penal Code, 1860 ('IPC' hereinafter) convicted by the learned Trial Court *vide* order dated 18th January, 2017. The said conviction was upheld by the Coordinate Bench of this Court *vide* judgment dated 3rd

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May, 2018 passed in Criminal Appeal no. 557/2017 and subsequently by the Hon'ble Supreme Court *vide* order dated 9th May, 2019.

3. Thereafter, the petitioner applied for the first spell of furlough for a period of three weeks *vide* application dated 6th April, 2023 and the same was allowed *vide* order dated 3rd August, 2023 and availed by the petitioner from 9th August, 2023.

4. In the month of November, 2023 itself, the petitioner's request for second spell of furlough for a period of two weeks was accepted and he availed the same from 8th November, 2023. Subsequently, the petitioner moved a third spell of furlough in the month of December, 2023 and the same was allowed *vide* order dated 6th February, 2024.

5. Thereafter, an application dated 23rd March, 2024 for another furlough was filed by the petitioner, however, the same was returned back *vide* order dated 16th May, 2024 ('impugned order' hereinafter) stating that the petitioner has already availed the first spell of furlough for two weeks and therefore, the petitioner needs to apply for second spell of furlough for the requisite period as per the Delhi Prison Rules, 2018 ('DPR' hereinafter).

6. Aggrieved by the same, the petitioner has filed the instant petition.

7. The learned counsel appearing on behalf of the petitioner submitted that the petitioner duly filed for third furlough within the one year period from the conviction date and therefore, the impugned order is bad in law.

8. It is submitted that the respondent authority adopted delay tactics to decide the furlough application and the prisoners are suffering due to the same. In support of the said argument, the petitioner cited Rule 1229 of the



DPR which states that the authorities ought to decide the furlough application within four weeks.

9. It is submitted that the petitioner had moved the first spell of furlough for three weeks before the respondent on 6th May, 2023 and the same was decided in a three months period leading to delay in availing the subsequent furloughs.

10. It is also submitted that the relevant rules i.e. Rule 1229 of the DPR, 2018 provides for deciding of the application for furlough within four weeks and therefore, the delay in adjudication of the petitioner's application cannot negatively hamper him.

11. In view of the foregoing submissions, it is submitted that the present petition be allowed and reliefs be granted as prayed.

12. *Per Contra*, the learned ASC appearing on behalf of the State/respondent vehemently opposed the instant petition submitting to the effect that the petitioner's current conviction year starts from 18th January, 2024 and therefore, the furlough granted for two weeks on 6th February, 2024 should be counted as the first spell of furlough for the current conviction year.

13. It is submitted that the convict/petitioner had moved an application for grant of the first spell of furlough vide application dated 1st April, 2024 and pursuant to objections by the respondent authority, the petitioner duly filed a fresh application for grant of second spell, therefore, he duly conceded to the fact that furlough as granted to him in conviction year 2024 was the first spell.



14. It is submitted that the Rule 1221 of the DPR, 2018 provides for grant of maximum of seven weeks of furlough in a conviction year and therefore, the period cannot exceed more than seven weeks in a conviction year.

15. Therefore, in view of the foregoing submissions, the learned ASC appearing on behalf of the respondent State prayed for dismissal of the instant petition.

16. Heard the learned counsel for the parties and perused the records.

17. It is discernible from the perusal of the records that in the year 2023, the convict/petitioner had applied for the first spell of furlough for a period of three weeks on 6th May, 2023 and the same was decided after three months approximately, and the subsequent furloughs also met the same fate, where, despite the petitioner being eligible for the same, the authorities delayed the decision on his application.

18. Finally, for the third spell of furlough for two weeks, the petitioner made an application in the month of December, however, the same was decided in the month of February, i.e., after passing of the stipulated period.

19. As cited by the petitioner, the Rule 1229 of the DPR, 2018 binds the superintendent of the Prison to ensure that an application for furlough is cleared from all the channels within four weeks. The said rule is reproduced herein:

“..The Superintendent of Prison will ensure that the application for furlough is cleared from all channels within 4 (four) weeks. The decision will be communicated to the convict along with a copy of the order by the superintendent of Prison...”



20. Therefore, the rule clarifies that the Jail Authorities are duty bound to process the application for furlough within four weeks.

21. In the instant case, it is not in dispute that the respondent authorities decided the applications filed by the petitioner after a prolonged delay which led to further delay in filing of the next spell of furloughs.

22. Even though furlough is not an absolute legal right available to the convicts, the regular grant of the same to the instant petitioner shows that his conduct in the jail was satisfactory.

23. As per material on record, the petitioner convict had applied for the third spell of furlough on 23rd December, 2023, i.e., within the conviction year 2023, however, the same was only decided by the authorities after a delay therefore, leading to start of the next conviction year from 18th January, 2024 and the same has been cited as a reason by the authorities to consider the furlough granted on 6th February, 2024 as the first spell of furlough for the present conviction year.

24. There is no dispute that the petitioner has already availed two furloughs in the present conviction year (2024), however, depriving him the right to get another spell of two weeks would defeat the intent of the DPR. The objective for grant of furlough is to facilitate the cordial relations of the convicts with the society and therefore, the States are empowered under entry 4 of the State List of the Constitution to enact the relevant rules to decide the said subject matter.

25. Since the relevant rule i.e. Rule 1229 of the DPR, 2018 mandates the authority to decide the application within four weeks, the non-conformity to



the same cannot act as a detriment to the prisoners. A similar view has been taken by the Coordinate bench of this Court in order dated 7th March, 2024 passed in the case of *Dinesh kumar v. State* in **W.P. (Crl) 732/2024**.

26. Therefore, this Court is of the view that the failure on part of the respondent authority to conform to the said rule cannot deprive the petitioner of the right to be granted the third spell of furlough for the year 2024 which he is rightfully eligible for.

27. Furthermore, the grant of subsequent furloughs to him shows that the authorities did not object to his application on merits, rather on the procedural aspect, to which he cannot be blamed for.

28. Therefore, this Court deems it appropriate to hold that the impugned order is in contravention to the established rules and the delay in processing the application cannot be attributed to the prisoner/petitioner.

29. In view thereof, the respondent authority is directed to consider the furlough granted to the petitioner on 6th February, 2023 as the third spell of furlough for the preceding conviction year. It is made clear that this Court has not commented upon the merits of the grant of furlough rather has only decided the instant petition on the aspect of non-conformity to the rules by the Jail Authorities.

30. Accordingly, the instant petition is allowed and the impugned order dated 16th May, 2024 is set aside with liberty to the petitioner to apply for the third spell of furlough for two weeks in the present conviction year, i.e. 2024 and the said application of the petitioner has to be decided by the Jail Authorities within a period of four weeks in accordance with the law.



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31. In view of the above facts and circumstances, the instant petitioner stands disposed of along with the pending applications, if any.

32. The Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 22, 2024

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Click here to check corrigendum, if any

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