



2024:DHC:6971



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

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Date of Decision: 05.09.2024

+ W.P.(CRL) 1937/2024 & CRL.M.A. 24257/2024

MR. X

.....Petitioner

Through: Mr.Alok Tripathi and Mr.Shubham,
Advocates.

versus

DIRECTOR GENERAL OF PRISONS

.....Respondent

Through: Mr.Yasir Rauf Ansari, ASC (Crl.) for
State with Mr.Alok Sharma and
Mr.Vasu Agarwal, Advocates.**CORAM:****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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ORDER**ANOOP KUMAR MENDIRATTA, J (ORAL)**

1. 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 preferred on behalf of petitioner with the following prayers:

"a. Issue appropriate writ, order and/or direction in the nature of Certiorari for quashing the impugned Order No. F.10(3768493)/CJ/LEGAL/PHQ/2024/4039 dated 20.05.2024 passed by the respondent; and

b. Issue appropriate direction in the nature of 'Mandamus' for the enlargement of the petitioner on first spell of furlough for a period of three weeks on the grounds of surgery and reconnection of social ties."

2. In brief, petitioner was convicted and initially sentenced to death by learned trial court vide order dated 22.08.2018 in FIR No.69/2009 under Sections 302/364/201/394/468/471/482 IPC & Section 25 of Arms Act registered at P.S. Vasant Vihar. The sentence was commuted to life

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imprisonment in appeal by the High Court.

Apart from above, petitioner is also convicted and sentenced to life imprisonment in another case under Section 302 IPC, in respect of which an appeal is stated to be pending. However, learned counsel for petitioner submits that sentence has been suspended, which has been challenged by the State before Hon'ble Apex Court.

3. The case of petitioner is that though he is eligible for furlough as per Jail Rules but the same has been denied vide order dated 20.05.2024 passed by the Competent Authority on the ground that he is a habitual offender as under:

“Sub: Regarding application of Furlough in respect of convict S/o Pritam Singh in case FIRNo.69/2009, U/s.302/364/201/394/468/471/482/IPC & 25 Arms Act, P/s Vasant Vihar.

Ref: File CD No.003768493: Application dated 11.03.2024 of furlough in respect of convict S/o Pritam Singh. In this regard, I am directed to inform you that the Competent Authority has considered the application as referred above for grant of furlough and the same has been declined by the competent authority for the following reason(s):-

He has been awarded two life sentences u/s 302 IPC in two different criminal cases. Hence, he is a habitual Offender and not eligible for grant of furlough in view of Rule 1223(II) of Delhi Prison Rule 2018. The Rule 1223(II) of DPR-2018 is reproduced as under:-

‘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.

The convict may be informed under proper acknowledgement.”



CONTENTIONS ON BEHALF OF PETITIONER

4. Learned counsel for the petitioner submits that petitioner had initially applied for grant of parole which was denied by the Competent Authority vide order dated 28.02.2024 (illegible) reflecting that petitioner is eligible for furlough. However, aforesaid application for furlough is stated to have been wrongly denied by the Competent Authority on the ground of his conviction in two other cases under Section 302 IPC.

Placing reliance upon Rule 1225(ii) of Delhi Prison Rules, 2018, learned counsel for petitioner submits that the despite being convicted for multiple murders in different cases, petitioner is entitled for furlough. He further submits that Competent Authority did not consider the Social Welfare Report/Recommendation while deciding the furlough application and merely denied benefit of furlough on the ground that petitioner is a habitual offender.

He further submits that Social Investigation Report and Nominal Roll dated 14.03.2024 reflects that convict has undergone more than 16 years of his sentence including under trial period as well as remission. The conduct of petitioner is also stated to be satisfactory.

CONTENTIONS ON BEHALF OF RESPONDENT/STATE

5 (i) On the other hand, petition is vehemently opposed by learned ASC for the State. It is pointed out that though investigation report filed by Investigating Authority reflects involvement of petitioner in 03 other cases apart from FIR No.69/2009 but as per information received from data maintained by SCRB Delhi, petitioner has been involved in more than 20 cases out of which he was convicted in 07 cases. He further points out that as per Previous Conviction/Involvement Report by SCRB Delhi, petitioner



is convicted in 03 cases though impugned order passed by Competent Authority only reflects 02 cases of conviction which is disputed by learned counsel for petitioner.

(ii) On merits, it is urged that order passed by the High Court granting parole to petitioner has been set aside by the Hon'ble Supreme Court in criminal Appeal No.938/2018. It is further pointed out that W.P.(CRL) 775/2024 and W.P.(CRL) 728/2024 preferred on behalf of petitioner for grant of parole, were dismissed by this Court vide order dated 11.03.2024, wherein following observations were made in paragraph 7:

"7. The petitioner has approached this Court with unclean hands and resorted to Bench Hunting by suppressing filing of earlier writ petition. In the facts and circumstances, no grounds are made out for any relief in the writ petitions. Taking lenient view in the matter, this Court is not imposing the cost on the learned counsel for the petitioner but strongly deprecates and disapproves the practice adopted by the petitioner/counsel for petitioner. The writ petitions are accordingly dismissed. Pending applications, if any, also stand disposed of. "

(iii) Reliance is further placed upon order dated 12.01.2024 passed in W.P.(CRL.) No.2998/2023 by a Co-ordinate Bench of this Court, whereby application for grant of parole was declined on merits. Para 11 of the same highlighting the offences in which petitioner is involved may be reproduced for reference:

"11. The status report file on record as well as the previous conviction involvement report available with SCRB Delhi, the petitioner herein has been involved in 20 other criminal cases including cases pertaining to commission of offences of murder robbery, theft as well as offences under Arms Act, etc. It is most crucial to note that the petitioner herein, as on date, stands convicted in two cases involving offence under Section 302 of IPC, for which he has been awarded rigorous imprisonment for life. The most recent conviction out of these cases pertains to case FIR No. 481/2008, registered at P.S. Vasant Kunj South wherein the petitioner has been



convicted inter alia for offences under 302 of IPC as well as MCOCA, vide judgment dated 18.10.2023 by the learned Trial Court, in a case where the petitioner along with co-accused persons had shot and killed a journalist, in September, 2008, with the motive of committing robbery. The conviction of the petitioner in present case relates to case FIR No. 69/2009 registered at P.S. Vasant Vihar in which he along with co-accused persons had again in March, 2009, abducted one woman in a car and thereafter, they had robbed her off her belongings and had smothered her to death and then dumped her body in bushes near Surajkund, Faridabad”

(iv) It is emphasized that petitioner is a habitual offender and involved in heinous offences and does not meet the criteria as laid down for grant of furlough under Delhi Prison Rules, 2018.

6. In rebuttal, learned counsel for petitioner submits that Amit Shukla, (co-convict) in both FIRs under Section 302 IPC, has been granted parole for a period of three weeks vide order dated 05.06.2024 in W.P.(CRL.) No.1471/2024 by Co-ordinate Bench of this Court. He further submits that application preferred on behalf of petitioner for suspension of sentence in another FIR No.481/2008 under Section 302 IPC has been allowed by Hon’ble Division Bench of this Court vide order dated 12.02.2024. Reliance is further placed upon order dated 28.11.2023 passed in W.P.(CRL) 2941/2023 by a Co-ordinate Bench of this Court, titled as ‘**Jeet Dahiya v. State of NCT of Delhi**’ wherein furlough was granted to petitioner highlighting purpose for grant of furlough.

However, it has been pointed out by learned ASC that in order dated 05.06.2024 passed in favour of co-convict, it was never pointed out that petitioner is involved in multiple cases of murder and robbery. Further the case of petitioner is stated to be on a worse footing considering the multiple involvements. Learned ASC also points out that co-convict has jumped the



parole granted by the High Court as brought to his notice, and an apprehension is expressed that petitioner may also jump furlough, if released at this stage.

ANALYSIS & FINDINGS

7. In order to appreciate the contentions raised by learned counsels, relevant Rules “1220 to 1225 of Delhi Prison Rules, 2018’ may be beneficially quoted for reference:

“Rule 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.*

Rule 1221 XXXXXXXXXX

Rule 1222 XXXXXXXXXX

Rule 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.

Rule 1224 *The following categories of prisoners shall not be eligible for release on furlough:*

i. Prisoners convicted under sedition, terrorist activities and NDPS Act.

ii. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime.

iii. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report.

iv. Convicted foreigners.



v. Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered.

Note: - (1) Simultaneous furlough to co-accused convicts are ordinarily not permissible. However, when co-accused convicts are family members, simultaneous release may be considered in exceptional circumstances only.

Note: - (2) If an appeal of a convict is pending before the High Court or the period for filing an appeal before the High Court has not expired, furlough will not be granted and it would be open to the convict to seek appropriate directions from the Court.

Rule 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."*

8. There is no dispute as to the principles for granting furlough as noticed in W.P.(CRL.) No.2941/2023 decided by Co-ordinate Bench of this Court relying upon observations of Hon'ble Supreme Court in ***Adbir v. State (NCT of Delhi)***, 2022 SCC OnLine SC 527, followed by judgment of Hon'ble Division Bench in W.P.(CRL.) 23/2023 titled as ***Chandrakant Jha v. State of NCT of Delhi***.

9. However, it is important to underline that in order to be eligible for furlough, petitioner must fulfill the criteria laid down in Rule 1223 of Delhi



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Prison Rules, which mandates that the prisoner should not be a habitual offender.

Rule 1224 of Delhi Prison Rules further provides for the categories of prisoners who shall not be eligible for release on furlough and **Rule 1224(iii)** relates to the prisoners who are considered dangerous or have been involved in serious prison violence or re-arrested or absconded while released on parole or furlough or have been found to be instigating serious violation of prison discipline. Also, **Note-(1)** to the aforesaid Rule provides that simultaneous furlough to co-accused convicts is ordinarily not permissible but the simultaneous release may be considered in exceptional circumstances when co-accused convicts are family members.

The discretion to Competent Authority for releasing the prisoners convicted for multiple murders, whether in single case or several cases, as provided in Rule 1225 has to be seen in the light of conditions laid down in Rule 1223 as well as keeping in perspective the categories of prisoners ineligible for furlough as provided in Rule 1224. The public interest needs to be counter-balanced and the prisoners who reflect a propensity to commit offences or may pose a potential threat to law and order of society may not be released on furlough.

10. It has been pointed out by learned ASC that co-convict who has been admitted to parole by a Co-ordinate Bench of this Court vide order dated 05.06.2024 is already absconding. Further, keeping in regard the criminal cases in which the petitioner is involved and convicted as well as the gravity/heinousness of the offences, the petitioner appears to be a habitual offender.



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For the foregoing reasons, petition is dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the Superintendent Jail for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

SEPTEMBER 05, 2024/v/sd