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

+ **W.P.(CRL) 2016/2024**

RAJ KUMAR @ BHEEMA

.....Petitioner

Through: Mr. Sameer Chatrath, Advocate
(DHCLSC).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Rahul Tyagi, ASC (Crl.) for State
with Mr. Sibou, Advocate.
Insp. Manjeet Singh, PS NFC.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **10.07.2024**

CRL.M.A. 19578/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P.(CRL) 2016/2024

1. 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 the petitioner with the following prayers:-

“a. Issue a writ or order in the nature of Certiorari quashing the furlough rejection order no. F.10 ((3768176) /CJ/LEGAL/PHQ/2024/4227 dated 24.05.2024.

b. Issue a writ or order in the nature of Mandamus directing the respondent to release the petitioner on furlough for a period of three weeks in FIR no. 601/2008, PS: New Friends Colony, Delhi, Under Section: 302 IPC.



c. Allow the petitioner to furnish one surety of Rs. 10,000/- to the satisfaction of Jail Superintendent, CJ-02, Tihar.”

2. Issue notice. Learned ASC for the State appears on advance notice and accepts notice.

3. Learned counsel for the petitioner submits that vide impugned order dated 24.05.2024, an application for grant of furlough preferred on behalf of petitioner has been declined by the Competent Authority for the following reasons:-

“i) SLP(Crl.) No. 697/2024 of above said convict is pending before the Hon'ble Apex Court, hence in view of order dated 16.05.2016 passed by the Hon'ble High Court of Delhi in W.P.(Crl.) 236/2016, case title Vikas Yadav Vs State of NCT of Delhi and order dated 03.07.2023 passed by the Hon'ble High Court of Delhi in W.P. (Crl.) 697/2022, case title Budhi Singh Vs NCT of Delhi, prison authority cannot entertain his application for grant of furlough, if a SLP is pending before Hon'ble Supreme Court of India.”

4. Learned counsel for the petitioner submits that though Note 2 to Rule 1244 of the Delhi Prison Rules, 2018 provides that if an appeal of the convict is pending before the High Court or the period of filing of an appeal before the High Court has not expired, furlough will not be granted, but it is open to the convict to seek appropriate directions in the matter. He further emphasizes that Note 2 to Rule 1244 only refers to the High Court and the pendency of SLP preferred on behalf of the petitioner before the Hon'ble Supreme Court does not bar the grant of furlough to the petitioner by this Court.

5. On the other hand, learned ASC for the State submits that the issue is no longer *res integra* and has been dealt in ***Budhi Singh vs. State NCT of***



Delhi, W.P.(Crl.) 697 of 2022, decided on 03.07.2023.

6. The findings in paras 81 to 87 in **Budhi Singh vs. State NCT of Delhi (supra)**, may be beneficially reproduced for reference:

“Issue A.

81. I hold that the principle of derogation of power as laid down in the judgment of Hon’ble Supreme Court in **K.M. Nanavati** (supra), is not applicable in cases where the applicable prison rules do not forbid the executive from considering the application for furlough pending an appeal against conviction before an appellate court be it High Court or Apex Court. [Ref: **Basant Vallabh** (supra)]

82. However, where the applicable Prison Rules forbid the Executive from considering the application for furlough pending an appeal against conviction before an appellate court and mandates seeking of appropriate direction by the convict from an appellate court in which the appeal of the convict against the order of his/her conviction is pending, the principle of derogation of power as laid down in the judgment of Hon’ble Supreme Court in **K.M. Nanavati** (supra), would be applicable with full vigour, as in case of Note 2 to Rule 1244 of the Rules.

Issue B.

83. The true and correct purport and import of Note 2 to Rule 1244 of the Rules, is to confer the power upon the Appellate Court to examine and consider convicts furlough application, where his/her appeal against the conviction is also pending. Any other interpretation, as canvassed by the petitioner would lead to absurdity and anomalous situation and hence is to be discarded. Accordingly, the word “High Court” appearing in Note 2 to Rule 1244 of the Rules would have to be interpreted to ipso jure mean and include Supreme Court of India, if an appeal against an order of conviction is pending consideration before the Supreme Court of India.

Issue D.

84. In view of the specific mandate of Note 2 to Rule 1244 of the Rules, the High Court even in exercise of its plenary powers under Article 226 of Constitution of India cannot interfere with the order refusing the furlough to a convict pending his/her appeal before the Hon’ble Apex Court. This restraint would apply notwithstanding the convict making out a strong case of overwhelming mitigating circumstances acting in his/her favour. Any such exercise of power vested in High Courts under Article 226 of the Constitution of India, pending an appeal before the Apex Court, would amount to derogation of appellate powers of the Supreme Court of India and would be violative of the principle laid down by the Apex Court in **K.M. Nanavati** (supra).

Issue C, E, F & G.



85. Since these issues may involve possible declaration of the rule as not a good law, in terms of the Clause (i) of sub-rule (xviii)(a) of Part B of Chapter 3 of the High Court Rules & Orders Volume V any challenge to the constitutionality or any prayer for striking down of Rule 1224 of the Rules is required to be placed before the Hon'ble Division Bench.

86. In view of the above, the matter be placed before Hon'ble the Chief Justice for assigning the same to the roster Bench for rendering decision on Issue-C, Issue E, Issue-F and Issue-G as framed by this Court by its order dated 02.12.2022.

87. Subject to orders of Hon'ble the Chief Justice, list before the roster Bench on 10.07.2023."

7. In the facts and circumstances since the SLP preferred on behalf of the petitioner is pending consideration before the Hon'ble Apex Court, any orders for furlough would be in derogation of the appellate powers as held in ***Budhi Singh vs. State NCT of Delhi (supra)***. For the foregoing reasons, there does not appear to be any infirmity in the orders passed by the Competent Authority. Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J

JULY 10, 2024/akc