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

+ W.P.(CRL) 2053/2024
OMKAR DUBEY

.....Petitioner

Through: Mr. Anwesh Madhukar
(DHCLSC) & Ms. Prachi
Nirwain, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yasir Rauf Ansari,
ASC for the State with Mr.
Alok Sharma & Mr. Vasu
Agarwal, Advs.
SI Meenu, PS- Kirti Nagar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.09.2024

1. By way of the present petition, the petitioner seeks first spell of furlough in FIR No. 289/2013. The petitioner had applied for furlough on 20.11.2023. The application was kept pending and, thereafter, denied by the Office of the Director General of Prisons by order dated 13.06.2024.

2. The learned counsel for the petitioner refers to Rule 1229 of the Delhi Prison Rules, 2018. The same reads as under:

“1229. 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.”

3. It is apparent that the application filed by the petitioner was not considered within a period of four weeks. In terms of Rule 1226 (ix) and (x), it is clear that if no report is received within a period as specified, it shall be presumed that the



concerned Police authorities have no objection to the furlough being granted.

4. The benefit of furlough has not been extended to the petitioner in terms of Rule 1225 of the Delhi Prison Rules, 2018, which states that the prisoner convicted of murder after rape, under Protection of Children from Sexual Offences Act, 2012 (**'POCSO Act'**), may be considered for grant of furlough only if the parameters prescribed are satisfied. Rule 1225 of the Delhi Prison Rules, 2018 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.”*

5. The benefit of furlough granted to a prisoner convicted under the POCSO Act is, thus, dependent upon the specific recommendation of a DIG/ recommendation of Social Welfare or a Probation Officer. It appears that, in the present case, the DIG (Prisons) had not recommended the grant of furlough to the petitioner on the basis of report of the Police. The report of the DCP mentions as under:

“In the above matter a report has been cased from SHO Naraina. As per the report the given address R/o i.e. A-85/59, Block-A, Industrial Area Naraina Vihar, Naraina



Village Delhi was visited. A lady named Archana W/o Durgesh Dubey found present who stated that Omkar Dubey is her father in law who is confined in jail. She further stated that during furlough period he will stay at above said address. Her statement was recorded which is enclosed herewith. Hence the address is verified.

However, accused was involved in heinous case FIR No. – 289/2013 u/s 6 Pocso Act, PS Kirti Nagar. Hence his furlough may be dangerous to society and there is every possibility of contacting his associates and indulges in criminal activities during release period. He may also cause breach of peace in society and there is strong possibility that convict may take advantage of furlough. It will be very tough for law enforcement agencies to trace him out. Hence keeping in view on above convict furlough may not be granted.”

6. The reason mentioned for giving a negative report is that the accused was involved in a heinous case under Section 6 of the POCSO Act and, thus, his release on furlough may be dangerous to society and there is every possibility of contacting his associates and indulging in criminal activities during release. No reason, however, has been mentioned as to why the concerned DCP has come to such conclusion.

7. As noted above, Rule 1225 of the Delhi Prison Rules, 2018, does not bar the grant of furlough to the prisoner involved in heinous cases. Nothing has been mentioned which would point towards the apprehension that the petitioner, if released on furlough, would be dangerous to the society. The same appears to be a whimsical noting of the Officer concerned without any factual basis.

8. The prisoner is entitled to be released on furlough if convicted for offences under the POCSO Act, on a recommendation of the concerned Officer as mentioned in the Delhi Prison Rules, 2018. The recommendation, however, does not mean that the same would be at a whimsical discretion of the concerned Officer. The negative recommendation necessarily



has to be supported with the reasons.

9. The petitioner is stated to be in custody from the last more than eleven years and is a 73 year old man. No other objection has been raised to the grant of furlough.

10. In view of the above, the petitioner is directed to be released on first spell of furlough for the period of three weeks on the following conditions:

- b. The petitioner shall furnish a personal bond in the sum of ₹10,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent;
- c. The petitioner shall submit his residential address, where he shall be residing after his release, to the concerned Jail Superintendent, and shall not change the same without informing the concerned Jail Superintendent;
- d. The petitioner shall report to the SHO of the local area, once a week on every Sunday at 10:00 AM and shall not leave the National Capital Territory of Delhi during the period of furlough;
- e. The petitioner shall furnish his mobile number to the Jail Superintendent as well as to the SHO of the concerned Police Station on which he can be contacted if required. The said mobile number shall be kept active and operational at all times by the petitioner;
- f. The petitioner shall not indulge in any criminal activity during the period of furlough;
- g. Immediately upon the expiry of period of furlough, the petitioner shall surrender before the concerned Jail Superintendent;



- h. During this period, co-accused, if any, shall not be released on parole/furlough;
 - i. The period of furlough shall commence from the date of actual release of petitioner.
11. The present petition is allowed in the aforesaid terms.
12. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

AMIT MAHAJAN, J

SEPTEMBER 10, 2024

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