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

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Reserved on: 01.04.2024
Pronounced on: 25.04.2024

+ **W.P.(CRL) 3063/2023**

ASHOK KUMAR

..... Petitioner

Through: Mr. Sanjeev Kumar Baliyan,
Advocate (DHCLSC).

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for the
State with SI Archana, P.S.
Delhi Cantt. Mr. Kshitiz Garg,
Mr. Ashvini Kumar and Ms.
Chavi Lazarus, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant 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 filed seeking issuance of writ in the nature of certiorari quashing the order no. F.10 (03743542)/CJ/LEGAL/PHQ/2023/55198 dated 04.09.2023 passed by the respondent, and for issuance of writ in the nature of mandamus directing the respondent



to release the petitioner on first spell of furlough for a period of three weeks.

2. Brief facts of the present case are that the petitioner herein was convicted in case FIR No. 136/2014, registered at Police Station Delhi Cantt, Delhi, for offences under Section 376(2) of IPC and Section 6 of POCSO Act, and was sentenced to undergo rigorous imprisonment for life for offences under both the sections. His conviction was upheld by this Court in CRL.A. 715/2017, but his sentence was modified to the extent that he would undergo rigorous imprisonment for life only for offence under Section 376 of IPC.

3. It is the case of the petitioner that he had applied to Director General, Prisons, for grant of first spell of furlough for a period of three weeks, however, *vide* order dated 04.09.2023, the same was rejected on the ground of nature of crime committed by him and adverse police report.

4. The petitioner being aggrieved by the said order, has preferred this petition, and the learned counsel appearing on his behalf argues that the petitioner has already undergone incarceration of about 10 years, and he has earned three annual good conduct report, thereby being fully entitled to grant of furlough as per Delhi Prison Rules 1220, 1221, 1222 and 1223. It is stated that the rejection of the furlough has frustrated the whole purpose of the reformation of the convict as it would further frustrate him instead of his rehabilitation. It is also stated that the rejection order has been passed without application of mind, and in a routine manner. It is stated that the petitioner is working in the jail canteen and prays that he be released



on furlough for three weeks to maintain social ties. It is also argued that the petitioner was released on emergency parole by the concerned authorities on two occasions and after availing the same, he had surrendered before the jail authorities without misusing the liberty granted to him in any manner. Therefore, it is prayed that the present petition be allowed.

5. Learned ASC appearing on behalf of the State, on the other hand, opposes the present petition and argues that since petitioner is involved in commission of a heinous offence, he should not be granted furlough. However, he states that the address of the petitioner, of District Sultanpur, Uttar Pradesh, has been verified.

6. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned ASC for the State, and has perused the material on record.

7. This Court has also gone through the order of the competent authority *vide* which the application for grant of furlough was declined, and the same is extracted hereunder:

“..In this regard, I am directed to inform you that the competent authority has considered the application for grant of furlough and same has been declined at this stage in view of nature of crime committed by him, adverse police report...”

8. A perusal of the nominal roll of the petitioner reveals that the conduct of the petitioner inside the jail for last one year as well as the overall jail conduct has been reported as ‘Satisfactory’. This Court also takes note of the fact that the petitioner was convicted under Section 376(2) of IPC and Section 6 of POCSO Act. The petitioner



has mentioned in this petition seeking grant of furlough that he is remorseful of the act committed by him and that he has reformed himself, is working in the jail canteen and is sending his earnings regularly to his family.

9. This Court notes that the purpose behind enactment of provision of furlough is to facilitate the maintenance of family and social ties of the convicts, supporting their rehabilitation and reintegration into society, providing them relief from the rigors of imprisonment, promoting their positive behavior and discipline within the prisons, and contributing to their overall well-being and emotional health. The concept of furlough, has been explained in the Delhi Prison Rules, 2018, in the following words:

“1199. Furlough means release of a prisoner for a short period of time after a gap of certain qualified numbers of years of incarceration by way of motivation for maintaining good conduct and to remain disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence.”

10. It is also noted that Rule 1200 of the Delhi Prison Rules, 2018 provides insights into the objectives which are sought to be achieved by releasing a convict on parole or furlough. Rule 1200 reads as under:

“1200. The objectives of releasing a prisoner on parole and furlough are:

- i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters,
- ii. To enable him to maintain and develop his self-confidence,
- iii. To enable him to develop constructive hope and active interest in life,



- iv. To help him remain in touch with the developments in the outside world,
- v. To help him remain physiologically and psychologically healthy,
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and
- vii. To motivate him to maintain good conduct and discipline in the prison.”

11. This Court also observes that the concept of imprisonment in India, akin to many other nations, serves dual purpose within the criminal justice system. Firstly, it aims to safeguard society from the harmful actions of the convicted persons, ensuring the safety and security of its members by removing offenders i.e. criminals from the society and imprisonment acts as a deterrent against future criminal acts and protects innocent citizens from potential harm. Secondly, imprisonment is also designed to facilitate the rehabilitation and reformation of the convict. Recognizing the inherent dignity and potential for change within each individual, the criminal justice system endeavours to provide opportunities for personal growth, education, and skill development during the period of incarceration.

12. The ultimate goal of reformation is to empower the convict to reintegrate successfully into society as a responsible and productive member of the society. The emphasis on rehabilitation reflects a broader societal commitment to one of the golden and basic principles of criminal justice system, which aims at finding the causes behind criminal behaviour by a person and addressing as well as providing opportunities to him for his rehabilitation. The intent behind imprisonment is not solely that it should work as a punitive



measure but also serve the purpose of giving a transformative opportunity to the individual in conflict with law. Thus, by striking a balance between punishment and rehabilitation, the criminal justice system seeks to uphold the rule of law and at the same time, ensure protection of the rights of all citizens, who may fear for their safety, in case a criminal is not confined in prison and the right of a person to freedom, at the same time the commitment of the State even to an offender to give him an opportunity of reforming himself and joining the main stream of society.

13. The provision of parole/furlough is a step towards such opportunities being granted at some intervals to help an offender, be part of his family and the society and not get lost in the quagmire of guilt, depression, isolation or the other negative emotions which may engulf him being confined for long within the four walls of prison.

14. In the given facts and circumstances, it will also be useful to refer to the applicable Delhi Prison Rules, 2018 regarding criteria for grant of furlough. The same read as under:

“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: A prisoner, as described above, may be granted 7 weeks of furlough in three spells in a conviction year with maximum of 03 weeks in one spell.

Note: Every eligible convict may be granted one spell of furlough in the month of his birthday, subject to fulfillment of the other conditions, without any application for furlough moved by the convict. If the prisoner does not want to avail this furlough then written undertaking may be taken from him in this regard.



Rule 1222: If the prisoner commits an offence during the period, he is released on Furlough then the period will not be counted as sentence undergone.

Rule 1223: In order to be eligible to obtain furlough, the prisoner must fulfill the following criteria:-

- A. Good conduct in the prison and should have earned rewards in last 3 Annual good conduct report and continues to maintain good conduct.
- B. The prisoner should not be a habitual offender.
- C. The prisoner should be a citizen of India...”

15. The Delhi Prison Rules, 2018, with regard to grant of furlough indicate the intent behind the enactment of the rules, which specify that a prisoner sentenced to five years or more rigorous imprisonment and who has already undergone three years after conviction with unblemished record, becomes eligible for grant of furlough, which means that it is a reward to him which he earns by his reformation and good conduct. The benevolent policy of the State is apparent and visible in the note appended to Rule 1221, which says that every eligible convict may be granted one spell of furlough in the month of his/her birthday, subject to fulfillment of other conditions, without even any application for furlough being moved by the convict. This indeed reflects the benevolence of the legislature towards the convicts, that even without filing of an application for furlough in the month when his birthday falls, the convict may be granted furlough if he is eligible in all other regards, which can be seen by this Court, as a gesture of making a convict feel wanted, valuable and consider human by the community. This Court is not aware whether this rule is being put to use by the concerned authorities or not, though it is one of the very important and benevolent provisions working towards



fulfillment of these rules. It also specifies that if a prisoner would not want to avail this furlough, his undertaking may be taken in this regard.

16. It is also noted that Rule 1223 of Delhi Prison Rule, 2018 lays down the eligibility criteria to obtain furlough which is good conduct in the prison, earning of three annual good conduct report, to be not a habitual offender and to be citizen of India. The present petitioner fulfills all the three criteria, therefore, it is not clear as to why his application for furlough has been rejected. The petitioner is working as canteen *sahayak*, he has been in judicial custody for almost 10 years without remission, as per nominal roll placed on record. During emergency parole granted to him, he had surrendered in time and, therefore, to reject furlough application simply on the ground that he was involved in heinous offence would defeat the very purpose for which the provision was enacted.

17. Furlough is also a reward to a prisoner for his good behaviour and the traces of reformation which are visible in him in form of such behaviour inside the prison and is consistent conduct which is so meritorious that as per the jail rules, he is given an opportunity to maintain his social and family ties what is crucial to remember and note is the fact that when a person is on furlough, he is deemed to be serving the sentence though, not confined to prison as the period of furlough is counted as the period of serving of sentence though not serving it inside the jail. The importance of such provision can be understood also by understanding that the system reposes so much confidence in the offender due to his reformation that it lets him



serve the sentence for that particular period not inside the jail but outside the jail, in the free air and in the solace of proximity of his family.

18. If the provision of furlough is bound by rigid and mechanical interpretations of the rules, it will lose its true purpose and shine. Furthermore, a benevolent provision designed for the welfare of prisoners will diminish in the shadow of rigid interpretations by competent authorities. The Courts must be compassionate to ensure that the solitude of prison cells does not adversely affect the mental well-being of a prisoner and that the path of their rehabilitation is not derailed under the pretext of their reformation being inconsequential.

19. The essence of the words lies not merely in their formulation but in their thoughtful implementation. Rule 1200 has been meticulously crafted by the drafting committee with both caution and foresight. Moreover, the inherent generosity and compassionate spirit underlying these words should not be overshadowed by rigid interpretations or unconscious biases, particularly when dealing with offenders of serious crimes. It is only through empathy and understanding that we can truly appreciate the depth and sincerity of these provisions, ensuring that justice is served with fairness and humanity.

20. The provision of furlough stands as a constructive hope for individuals amidst incarceration. It offers a glimmer of opportunity for temporary release, allowing individuals to reconnect with their families, seek medical treatment, or pursue rehabilitation programs. Furlough provides a chance for prisoners to rebuild connections,



maintain a sense of normalcy, and foster hope for a brighter future beyond the confines of prison walls.

21. This Court also takes note of the fact that the petitioner is a convict and is serving sentence due to commission of an offence which is apparent from his incarceration. The rules of furlough and parole have been incorporated in the Prison Manual itself for the convicts only, and it is not the case that furlough and parole can be granted only to those who will be guilty of simple offences or not very serious or heinous offences. Barring some rules, the criteria for reformation is same for all convicts. The stress undergone by a convict due to his long incarceration cannot be overlooked and should be appreciated by the concerned authorities while passing such rejection orders, in the face of satisfactory jail conduct of the convict for last 10 years, a report of not misusing the liberty of emergency parole granted to him, which clearly reflect that he is trying to reform himself and is trying his best to be a useful member of the community, including his act of sending money regularly to his family for their up keep, as mentioned in the petition.

22. The address where the petitioner undertakes to reside during the period of furlough has been verified by the State, and a status report in that regard has also been filed on record.

23. Thus, considering the abovesaid facts and circumstances of the case, this Court directs that the petitioner be released on first spell of furlough for a period of three weeks, on the following terms and conditions:



- i. The petitioner shall furnish a personal bond in the sum of Rs.10,000/- with one surety of the like amount, to the satisfaction of the Jail Superintendent.
 - ii. The petitioner shall report to the SHO of the local area once a week on every Sunday between 10:00 AM to 11:00 AM during the period of furlough.
 - iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of local police station, on which he can be contacted if required. The said telephone number shall be kept active and operational at all the times by the petitioner.
 - iv. The petitioner shall ordinarily reside at the address mentioned in the petition i.e. in his village in District Sultanpur, Uttar Pradesh.
 - v. Immediately upon the expiry of period of furlough, the petitioner shall surrender before the Jail Superintendent.
 - vi. The period of furlough shall be counted from the day when the petitioner is released from jail.
24. In above terms, the present writ petition stands disposed of.
25. A copy of this judgment be sent by the Registry to the Jail Superintendent concerned.
26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 25, 2024/zp