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

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Reserved on: 19.03.2024
Pronounced on: 20.03.2024

+ **W.P.(CRL) 3213/2023**

MOHD. ISLAM

..... Petitioner

Through: Ms. Astha, Advocate
(DHCLSC)

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjay Lao, Standing
Counsel (Criminal) for the
State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 Cr. P.C has been filed on behalf of the petitioner seeking issuance of writ in nature of certiorari quashing the impugned order bearing No. F.10 (3474280)/CJ/ Legal/ PHQ/ 2023/ 61171 dated 03.10.2023 passed by the respondent and; for issuance of writ in the nature of mandamus directing the respondent to release the petitioner on 1st Spell of furlough for a period of three (03) weeks.



2. Briefly stated the petitioner is presently confined in Central Jail No. 14, Mandoli, Delhi. By virtue of judgment dated 29.03.2010 the petitioner was convicted under Sections 302/201/34 of the Indian Penal Code, 1860 ('IPC') and Section 25 of the Arms Act, 1959 in case arising out of FIR bearing No. 457/2006 registered at Police Station New Ashok Nagar, Delhi and was sentenced to undergo life imprisonment for by the learned Additional Sessions Judge, Karkardooma Courts, Delhi. His appeal against conviction i.e., CRL.A. 1064/2010 was dismissed by this Court *vide* judgment dated 17.09.2013.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned order dated 03.10.2023 passed by the respondent is not sustainable in the eyes of law as the same is arbitrary, unjust and unfair. It is further submitted that the petitioner is aggrieved by the rejection order, since the application for grant of Furlough to the petitioner has been dealt with in a routine manner without appreciating the fact that the petitioner has spent about 17 years in prison and has maintained good conduct throughout. It is also stated that the petitioner herein has been released on furlough on five different occasions on furnishing personal bond only and has not misused this liberty. It is also stated that it was not appreciated by the competent authority that the petitioner was released on parole two times during his 17 years of incarceration and he had always surrendered on time. It is also stated that the present petitioner has been falsely implicated in FIR bearing No.472/2019 for offences



punishable under Section 308 IPC registered at Police Station Kalyanpuri, Delhi by the local residents in order to grab his property. It is also submitted that the petitioner in the aforesaid case has been enlarged on bail and moreover it has been almost four years since the alleged offence and as per Rule 1223 of the Delhi Prison Rules, 2018 the present petitioner has satisfactory conduct and has never been issued any punishment tickets. It is also stated that the respondent has committed grave error by rejecting petitioner's application for grant of furlough without appreciating the intent behind the provisions of furlough. It is therefore, stated that the petitioner be granted furlough for three weeks as prayed for.

4. *Per Contra*, learned ASC for the State on the other hand opposes the present petition and submits that the present petitioner cannot be granted furlough since there is no infirmity in the order passed by the competent authority. In this regard it is submitted that during verification of the facts mentioned in petition, on 03.11.2023 Inspector Darpan Singh had gone to the given address of petitioner i.e. H. No.2/28, Khichripur, Delhi, where tenant Mr. Navabuddin Khan was found available with his family. On enquiry, he stated that this property belongs to late Shri Babu Khan, who is father of the petitioner. He lives as a tenant at the property since last 13 years and pays rent by depositing the cash in petitioner's Jail account. Further, he stated that the petitioner is a dreaded criminal. It is further submitted that Navabuddin had further stated that the petitioner had murdered his 9 years old nephew and that the petitioner takes free



goods from various shopkeepers and if they don't provide the same to the petitioner, he beats them. It is further submitted that in this regard, enquiry was made from 32 local residents and their statements had been recorded and all of them had deposed against petitioner's conduct. Therefore, the petition may be dismissed.

5. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.

6. This Court notes that the petitioner had approached the competent authority for grant of 1st spell of furlough for three weeks vide application dated 28.10.2021. However, on 03.10.2023, petitioner's application for grant of furlough was rejected by the competent authority on the following grounds:

“.....a)The convict was re-arrested in case FIR No.472/2019 dated 12.10.2019 under Section 308 of IPC registered at Police Station Kalyanpuri, Delhi.

b)The convict has violated the conditions of maintaining peace and good behaviour during release on furlough...”.

7. This Court notes that the application for grant of furlough to the petitioner has been rejected on the ground that the petitioner had been re-arrested in FIR bearing No.472/2019 for offences punishable under Section 308 IPC registered at Police Station Kalyanpuri, Delhi while on furlough granted by this Court from 09.10.2019 to 31.10.2019.



8. This Court has also gone through the Delhi Prison Rules, 2018. Rule 1197 and 1200 provide insight as to what objects are achieved by releasing a convict on parole. The said rules read as under:

“1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison.

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...”

9. Further, Rule 1223 provides criteria in which a prisoner can be released on furlough. The said rule reads as under:

“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.”



10. This court notes that the overall conduct of the present accused has been opined to be unsatisfactory on the ground that the petitioner was granted three weeks furlough from 09.10.2019 to 31.10.2019 and while on furlough he had committed another offence and had been re-arrested on 12.10.2019 in another FIR bearing No.472/2019 for offences punishable under Section 308 IPC. This court also notes the fact that no punishment has ever been awarded to him after his re-arrest in the year 2019. The only ground for rejecting furlough to the petitioner is on the ground that while he was out on furlough, he had indulged in commission of another offence, which is pending trial. However, it is further noted that the present petitioner has been granted bail in the said case. Furthermore, the misconduct last reported is of the year 2019 i.e. about four years back. As per Prison Rules, the petitioner is entitled to furlough on the basis of Rule 1223 as for the last one year his conduct has been satisfactory. So far as the statements of the local residents are concerned, this court is of the opinion that a furlough is a valuable right of a convict, which becomes available to a convict on the basis of his behaviour inside the prison. Though, it is also important to consider how the convict behaves while out on furlough or parole, however, this court cannot lose sight of the fact that the incident in question is of the year 2019. The applicant has not been imprisoned since 2019 and has been in judicial custody for last 17 years. The fact that he does not have his near family members alive cannot be a ground to not release him since if he does not have a family, he may have friends or he may



utilize and take out his inner stress pursuing any other activity to de-stress himself.

11. Thus, considering the overall facts and circumstances of the case this Court is inclined to grant furlough to the present petitioner for a period of two (02) weeks from the date of his release, on the following 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. Immediately upon the expiry of period of furlough, the petitioner shall surrender before the Jail Superintendent.
- v. The period of furlough shall be counted from the day when the petitioner is released from jail.

12. However, in case, if the petitioner engages in any misconduct or commits an offence while on furlough, the same shall be reported to the competent authority and in such a case, the said conduct of the petitioner will automatically result in cancellation of petitioner's furlough, and he will be required to surrender or will be promptly returned to jail.

13. In view thereof, the petition is disposed of in above terms.



14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2024/hs