



\$~

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

%

***Reserved on: 02.04.2024
Pronounced on: 25.04.2024***+ **W.P.(CRL.) 3253/2023**

DEEPAK

..... Petitioner

Through: Mr. Arjun Malik, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for the
State with W/SI Sangeeta and
SI Satish Kumar, P.S. Shahbad
Dairy.**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 for quashing of rejection order no. F.10(003738211)/CJ/LEGAL/PHQ/2023/54607 dated 01.09.2023 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. 582/2016, registered at Police Station Shahbad Dairy, Delhi, for offence under Sections 376 of IPC and Section 6 of POCSO Act. After completion of trial on 24.07.2018, the petitioner was held guilty for the offence under Section 376(2)(i) of IPC and accordingly convicted and awarded the sentence of rigorous imprisonment for life and fine of Rs. 20,000/-, and in default of payment of fine, simple imprisonment for 60 days, vide order on sentence dated 28.07.2018. The appeal against his conviction filed by the petitioner i.e. CRL.A. 925/2018 was dismissed by this Court on 27.04.2023, upholding the order passed by the learned Trial Court.

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 01.09.2023, the same was rejected on the following grounds:

“..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 on the basis of nature of crime committed by him, report of probation officer wherein probation officer has not recommended for furlough. As per report of probation officer, the victim of the case, a 12 year old girl lives next door. This is a safety threat to both convict and victim...”

4. Learned counsel for the petitioner argues that the petitioner has been in judicial custody for about seven years and eight months, and has unblemished jail record. His overall jail conduct as well as jail conduct of last one year has been satisfactory, and no punishment has been awarded to him inside the prison. It is further stated that the petitioner has earned three annual good conduct reports and as per



Rule 1223 of Delhi Prison Rules, 2018, he is entitled to 1st spell of furlough. It is also submitted that the petitioner herein undertakes to not reside at the address which is in the vicinity of the house of victim, and he shall rather reside at the address of his maternal uncle, who lives in Bihar. Therefore, it is prayed that present petition be allowed.

5. Learned ASC for the State, on the other hand, opposes the present petition and submits that the petitioner has been convicted for offence of committing rape with a minor victim. However, he states that the address of Bihar, of the maternal uncle of the petitioner, 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 available on record.

7. Having considered the impugned order of rejection of petitioner's furlough, this Court is of the opinion that the same is based on two grounds i.e. he is guilty of a heinous offence, and that if he will stay in the house next to the house of the victim, there can be a threat to both the victim and the petitioner. However, after going through the status report filed on record, this Court notes that that the petitioner has furnished address of his maternal uncle at Bihar and states that he will be staying at the said address during the period of furlough. This address has been verified by the State.

8. Rule 1223 of Delhi Prison Rules, 2018 provides the eligibility criteria for grant of furlough, which reads as under:



“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...”

9. This Court also takes note of the fact that the petitioner has been in judicial custody for more than seven years and eight months, and has never been released either on parole, bail or furlough. His consistent conduct in the jail has been satisfactory. He has been working as ward *sahayak* and in the last more than seven years, he has never been awarded any punishment inside the jail. He is not a habitual offender, and has earned three annual good conduct reports, which also entitle him to furlough under Rule 1223 of Delhi Prison Rules, 2018.

10. Considering the fact that he undertakes to stay at his maternal uncle's home at Bihar whereas the victim stays in Delhi, and since the address of his maternal uncle at Bihar has been verified by the State, 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. 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.
11. In above terms, the present writ petition stands disposed of.
12. A copy of this judgment be sent by the Registry to the Jail Superintendent concerned.
13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 25, 2024/zp