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

% **Date of Decision: 29.01.2024**

+ **W.P.(CRL) 3374/2023 & CRL.M.A. 34298/2023**

JAMIL Petitioner

Through: Mr. Satyam Thareja, Advocate
with Mr. Pratyaksh Sikodia,
Advocate

versus

THE STATE (GOVT OF NCT) DELHI Respondent

Through: Mr. Rahul Tyagi, ASC for the
State with Ms. Priya Rai, Mr.
Sangeet Sibou, Mr. Jatin and
Mr. Aashish Chojar, Advocates
with Inspector Ajay Singh, P.S.
Seemapuri

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (Oral)

1. The instant petition under Section 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking issuance of writ in the nature of certiorari for quashing of order dated 16.10.2023 bearing No. F.10(3747034)/CJ/Legal/PHQ/2023/6996 passed by the respondents and issue a writ in nature of mandamus directing respondents to release the petitioner on 1st Spell of furlough for a period of three weeks.

2. The petitioner is presently confined in Central Jail No. 8/9, Tihar, New Delhi. By virtue of judgment dated 29.01.2018, the petitioner was



convicted under Section 302 of Indian Penal Code, 1860 ('IPC') in case arising out of FIR bearing no. 483/2013, registered at Police Station, Seema Puri, Delhi and was sentenced to undergo rigorous imprisonment for life by the learned Additional Sessions Judge, Karkardooma Courts, Delhi. His appeal against conviction i.e., CRL.A. 585/2018 was dismissed by this Court *vide* judgment dated 04.09.2018. Thereafter, the petitioner preferred SLP (Crl) No. 3393/2019 before the Hon'ble Supreme Court which was dismissed on 08.04.2019.

3. Learned ASC appearing on behalf of the State draws this Court's attention to the fact that the petitioner's overall conduct in the jail is satisfactory and he had been given punishment tickets dated 07.04.2021, therefore, the present writ petition be dismissed.

4. On the other hand, learned counsel for the petitioner, who appears through video conferencing states that the petitioner is unable to produce on record any document in support of his present writ petition and the application be allowed without consideration of documents. Learned Counsel for the petitioner submits that rejection order dated 16.10.2023 by the State is contrary to the basic tenets of law. It is stated that the only reason for dismissal of the application of the petitioner for grant of parole is that he has been awarded with punishment ticket once. It is further vehemently submitted that the rejection order has been passed mechanically without application of mind and violates the provisions of Rule 1210(II) of the Delhi Jail Rules, 2018. It is also stated that the petitioner is seeking furlough on the grounds to maintain social ties and to curb inner stress and depression due to incarceration. Therefore, furlough be granted to the petitioner for a period of three weeks, as prayed for.



5. This Court has heard arguments on behalf of both the parties and has gone through the material placed on record.
6. This Court has perused rejection order dated 16.10.2023 passed by the respondents and the same is reproduced as under:

"This is in reference to the application for grant of furlough to convict Jameel s/o Babu Khan.

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 in view of guideline No. 25 of Standing Order No. 01/2019 as the above said convict has not earned fresh three AGCR in consecutive years after jumping emergency parole in 2021.

Guideline No.25 of Standing Order no. 01/2019 is reproduced as under:

"If the prisoner commits an offence. during the period he is released on furlough or abscond/jump then the period will not be counted as sentence undergone. In such case the prisoner will be required to earn fresh AGCR for three consecutive years to become eligible for furlough".

The convict may be informed under proper acknowledgement.

7. Thus, the application for grant of parole filed by the petitioner has been rejected on the ground that he had jumped parole already granted to him during the COVID-19 period and may jump parole again.
8. While considering the present writ petition for grant of Parole, the Court has to remain conscious of the fact that the petitioner has been awarded rigorous imprisonment for life and that as per Nominal Roll, he has already remained in incarceration for almost 09 years and 02 months excluding remission of about 01 year and 08 months. As regards the overall jail conduct of the petitioner, it has been reported as satisfactory as per the nominal roll.
9. This Court cannot overlook the circumstances and the family



exigencies that may have arisen in the family of the petitioner. Needless to say, while dealing with an issue relating to grant of Parole to a convict, the Courts are required to balance the interests of convict as well as of the society. However, the Courts are also required to consider cases, such as present one, with sensitivity and compassion, and an opportunity may be provided to a convict to re-establish social ties

10. This Court has perused 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...”

11. Further, Rule 1223 provides criteria's 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 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.”

12. This Court has gone through Rule 1210 of the Delhi Prison Rules, 2018 and it is necessary to reproduce the same in order to adjudicate the case at hand:

“1210. In order to be eligible for release on parole in terms of Rule above:

I. A convict must have served at least the period of one year in prison excluding under-trial period and any period covered by remission. However, in exceptional cases, where the prisoner has spent more than 3 years as under trial period or half of the sentence of the punishment awarded as under trial then his parole application may be considered, if he has spent at least 6 months in prison as convict.

II. The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application.

III. During the period of release on parole or furlough, if granted earlier, the convict should not have committed any crime.

IV. The convict should not have violated any terms and conditions of the parole or furlough granted previously.

V. A minimum of six months ought to have elapsed from the date of surrender on the conclusion of the previous parole availed. In emergency, parole may be considered even if minimum period of six months has not elapsed from the date of termination of previous Parole. The emergency may include delivery of a child by the wife of the convict, death of a family member, marriage of children, terminal illness of family members and natural calamities”.

13. This Court notes that Rule 1210 sub rule (II) mandates that a prisoner who has been awarded major punishment should have a good conduct for last two years from the date of application of grant of parole before the



concerned authorities. In the instant case, the petitioner had been awarded major punishments as per Rule 1272 of the Delhi Prison Rules, 2018 in the year 2021 and during filing of the application for grant of furlough on 16.08.2023, two years had elapsed passed and as per the nominal roll last punishment awarded to the petitioner was in the year 2021. Moreover, the alleged late surrender was in the year 2021 when the petitioner had himself surrendered on 01.04.2021 though, he was to surrender on 15.02.2021. The nominal roll records the conduct of the petitioner to be satisfactory. It was during the pandemic that there was confusion regarding the date of surrender. In this case, it is not the case of the prosecution or the concerned competent authority that the petitioner herein had to be arrested but it is apparent from the record that he had surrendered himself though 45 days later than he was required to.

14. Considering the aforesaid facts and circumstances, this Court is inclined to grant furlough to the petitioner for a period of three 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.

15. However, this Court takes note of the fact that the rejection orders passed by the competent authority for grant of Parole or Furlough usually has three major reasons for rejection which are;

- (i) The rejection orders passed by the competent authority are sketchy as they fail to record any reasons for rejecting the application filed by an inmate for grant of Parole or Furlough on merit.
- (ii) The rejection orders passed by the competent authority primarily fails to depict the conduct of the inmates in last two annual years, as to whether the inmate had earned a satisfactory report for his conduct or not, before filing of the application for grant of Furlough or Parole.
- (iii) Even if an inmate had been awarded a major punishment in the year 2020, the reason for rejection of grant of furlough or parole in the year 2024 is usually the punishment ticket awarded to the inmate in the year 2020 which is in clear contravention to Rule 1210 (II) of the Delhi Prison Rules, 2018.

16. In these circumstances, this Court is passing the following guideline to be complied by the concerned prison authorities while passing orders granting or rejecting Furlough/Parole to an inmate:

The competent authority passing orders on the applications filed by the inmate for grant of parole or



furlough would pass a reasonably reasoned order which will reflect as to what weighed in their mind for rejection of the furlough or parole.

17. Copy of the judgment be sent to the DG (Prisons), New Delhi to ensure compliance that all future orders passed by the competent authority comply with the above-mentioned guideline.
18. In above terms, the present writ petition alongwith pending application is disposed of.
19. A copy of this order be sent by the Registry to the Jail Superintendent concerned.
20. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2024/ns

Click here to check corrigendum, if any