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

% **Date of Decision: 01.04.2024**

+ **W.P.(CRL) 3434/2023**

JAGAN NATH

..... Petitioner

Through: Mr. Gautam Khazanchi & Mr.
Anuj Aggarwal, Advocates.

versus

STATE GOVT OF NCT OF DELHI

& ANR.

..... Respondents

Through: Mr. Amol Sinha, ASC for
State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The instant petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the petitioner seeking quashing of Order No.F.10/35444477/CJ/ LEGAL/PHQ/2023, dated 02.11.2023 passed by respondent, and for issuance of writ in the nature of mandamus, directing the respondent to release the petitioner on furlough on furnishing cash surety in lieu of order granting furlough dated 07.07.2023.

2. In the present case, the petitioner was convicted for



commission of offence under Section 302 of Indian Penal Code, 1860 ('IPC') and was awarded sentence of rigorous imprisonment for life and his appeal against conviction i.e. CRL.A. 448/2012 was dismissed by this Court on 25.11.2017.

3. The petitioner herein had applied for grant of furlough to the competent authority, who was pleased to allow the application and had granted him furlough for a period of three weeks on furnishing a bond of Rs.10,000/- with one surety on the like amount *vide* order dated 07.07.2023. The relevant portion of this order reads as under:

“In this regard, I am directed to inform that the Competent Authority (Prisons) has considered and pleased to grant 1st spell of Furlough to the above named convict for a period on Three Weeks from the date of his release subject to the following conditions :-

1. That he shall furnish one surety of Rs.10,000/- (Rupees Ten Thousand Only) alongwith a personal bond in the like amount for his release on Furlough to the satisfaction of the Superintendent, Central Jail No. 12
2. That he shall maintain peace and good behavior during his period of release on Furlough.
3. That he will remain at his residence during the period of his release on furlough and his ordinary place of residence shall be:- Vill-Basantpur, PO-Samrota, Distt-Amethi Janpath, PS-Shivratan Ganj (UP).
4. That he shall report at least once in a week to Police Station under which his ordinary place of residence falls, during the period of his release on furlough.
5. That he shall surrender to the Superintendent, Central Jail No.12, Mandoli, Delhi on the expiry of his period of release on furlough.”

4. Since, the petitioner was unable to arrange surety, he had filed an application before the competent authority for modification of the



order and to release him on furnishing a cash surety. However, the office of the competent authority *vide* its order dated 02.11.2023 had dismissed the application. This order, which has been impugned before this Court, reads as under:

“This is in reference to application filed by above said convict for modification in furlough order dated 07.07.2023 to the extent to release her on furlough on personal bond/cash surety.

In this regard, I am directed to inform that the request of above said modification in the order dated 07.07.2023 to release her on furlough on personal bond/cash surety instead of one Surety was considered by the Competent Authority and same has been declined at this stage...”

5. Learned counsel appearing on behalf of the petitioner argues that the petitioner, who has suffered incarceration for about 13 years and 10 months, needs to main social ties and he be released on furnishing a cash surety. It is submitted that the petitioner was granted parole under HPC guidelines and was released on furnishing personal bond during the relevant period and he had surrendered in time and had also complied with all the terms and conditions of grant of parole. It is also stated that the rejection order has prejudiced him since he is eligible for availing furlough as per Rule 1210 of Delhi Prison Rules, 2018. It is also pointed out that on a few earlier occasions also, he was granted furlough which he could not avail due to non-availability of surety.

6. Learned ASC for the State, on the other hand, has opposed the present petition.

7. This Court has heard arguments addressed by both the parties



and has gone through the case file.

8. This Court is of the opinion that there is no dispute that the petitioner herein is entitled, under the relevant rules of Delhi Prison Rules, 2018, for grant of furlough as he fulfils all the eligibility criteria laid down under the rules for the same. In view thereof, the competent authority has been pleased to grant him furlough *vide* order dated 07.07.2023. Though the petitioner, being eligible under the Rules, has been granted furlough for the last about eight months, he could not avail the same since his application for being allowed to furnish cash surety instead of surety bond was declined by the competent authority.

9. The nominal roll of the petitioner reveals that he has been in judicial custody for about 13 years 10 months, excluding the remission of about 3 years and 7 months. He is working as *Langar Sahayak* in prison and his conduct throughout these long years have been satisfactory. Further, not a single punishment has been meted out to him till date. Moreover, he was granted three weeks furlough in the year 2019 on 06.04.2019, however, he could not avail it due to unavailability of surety. He was granted emergency parole of eight weeks in the year 2021 and he had surrendered in time. He was granted three weeks furlough again in the year 2021, which he again could not avail due to unavailability of surety. He was granted emergency parole again in August, 2021 which was extended from time to time and he had surrendered in time on 06.04.2023.

10. Thus, it is clear that despite being in judicial custody for about 13 years 10 months, there is no complaint of misconduct on part of



petitioner either when he was in jail or outside the jail on emergency parole. The fact that the petitioner has been granted furlough on three occasions till date reflects that he is eligible for grant of furlough due to his consistent satisfactory behaviour and good conduct in the jail. It is also reflected from the nominal roll that even when he was granted liberty of parole, he did not misuse the same.

11. The Delhi Prison Rules, 2018 provide insight as to what objects are achieved by granting parole or furlough to an inmate. In this regard, Rules 1197 and 1200 are reproduced hereunder for reference:

"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..."

12. The grant of furlough is a reward for good conduct indicative of reform of a prisoner. The consistent good conduct of the petitioner herein is nothing but an indication of his reform in the prison, which is the intent of the legislature behind confining an accused in the jail. It is sad that the petitioner herein, despite having reformed himself as indicated by his conduct and having fulfilled the criteria of being eligible for grant of furlough, has not been able to benefit by such orders as he was not able to furnish the surety.

13. This Court notes that at times, the family of an accused may not come forward to stand surety for him due to various societal reasons. In the present case, the family of the petitioner has not come forward to stand surety for him. This Court, however, has taken into account the fact that incarceration of an accused in judicial custody for about 14 years is a long period of confinement, and confinements in prison are stressful and take their own toll on a person's physical and mental well being. The Courts, on the basis of facts and circumstances of each case and taking into account the accompanying circumstances, the conduct of an accused inside and outside jail, have to often exercise the discretion granted under the writ jurisdiction. This Court notes that when the accused was granted emergency parole, he had been released on personal bond. At that time too, no surety bond was furnished, however, each time on being released so, he had surrendered in time before the prison authorities.



14. Thus, considering the intent behind releasing a prisoner on furlough and noting the overall conduct of the petitioner in the jail for the last about 14 years, the fact that he was earlier released on personal bond and he had surrendered in time and that his address has been verified, and he fulfils all the criteria for grant of furlough, this Court is inclined to allow the present application. In view thereof, the petitioner is allowed to be released on personal bond of Rs.10,000 alongwith cash surety of Rs.10,000/-. The rest of the conditions of the grant of furlough passed by the learned competent authority will remain the same.

15. Accordingly, the petition is disposed of in the above terms.

16. The order be sent to the petitioner through the Superintendent Jail concerned by the Registry forthwith.

17. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 1, 2024/hs

Click here to check corrigendum, if any