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

+ W.P.(CRL) 2357/2024
SANDEEP

.....Petitioner

Through: Mr. Rohan J. Alva
(DHCLSC), Adv.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg & Mr. Ashvini
Kumar, Advs.
SI Manita, PS- Mangolpuri

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

01.10.2024

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1. This Court has been taken through the Rule 1226 of the Delhi Prison Rules, 2018. The same provides that the application seeking furlough must contain the address of the applicant. It also mentions that the proposed address where the convict wishes to stay during furlough shall also be mentioned.
2. The learned counsel for the petitioner submits that the possibility of the convicts who have been in incarceration for a long time and not having a permanent address, is normal. He submits that most of the convicts, like the one in the present case, who have been in custody for more than a decade, are disowned by their own family members and in most of the cases, even the rights in the family properties are also taken away.
3. He further submits that the expecting a convict who has been in custody for more than a decade to provide an address is an onerous condition which has been frowned upon by the Hon'ble Apex Court in number of cases. He relies upon the judgement passed by the Hon'ble Apex Court in the case of **Re**



Policy Strategy for Grant of Bail : SMWP(Criminal) No. 4/2021, wherein the Hon'ble Apex Court had held that the Courts shall not insist on the prisoners to provide a surety especially when they have not been able to arrange the same despite the bail orders being granted.

4. He submits that insisting upon the onerous condition which cannot be fulfilled as in the present case, would amount to refusal to the right which the petitioner is otherwise entitled to and would be serious violation of Article 21 of the Constitution of India. He further submits that the requirements of having a fixed place of abode is not a pre-condition mentioned in the Delhi Prison Rules, 2018 and the same has been intentionally not made as a condition. He submits that wherever the Legislature wanted such condition, the same has been put, such as in Probation of Offenders Act, 1958.

5. He further submits that merely because the family members are not interested in the release of the petitioner, cannot be a ground for refusal of an application for furlough.

6. He submits that the provisions for parole and furlough have been incorporated as a beneficial provision so as to allow the convicts to maintain family and social ties, the same cannot be dependent on the wish of the brother and sister of the convicts. He submits that the convict is entitled to maintain social ties with the society at large including his earlier friends.

7. The learned Additional Standing Counsel for the State fairly submits that the applications of the convicts seeking furlough are not rejected on the ground that they do not have a permanent address to stay. He submits that the only requirement under the rules is that the address where the convict proposes to stay pursuant to his release, shall be mentioned and the same may



not be a permanent abode. He submits that the purpose of having the address of the convict is to have an assurance that the convict can be contacted as and when required.

8. The application filed by the petitioner was rejected on the ground that there is a strong possibility of him, influencing the evidences and witnesses. The said ground is clearly erroneous and the order, thus, is passed without any application of mind. It is an admitted case that the appeal filed by the petitioner against the order of conviction has already attained finality, and there cannot be any possibility of him, influencing the evidences or witnesses. The order seems to be cyclostyled order, signed by DS-Legal, PHQ, Delhi Prisons, without any application of mind.

9. The other ground taken for rejecting the application is that the sister of the convict does not wish that the petitioner be released on parole or furlough. The same also cannot be a ground for rejection of the application for release of the convict. The release of the convict is not based on the wish of the brother or the sister of the convict.

10. The impugned rejection order dated 08.07.2024 is, therefore, set aside.

11. The petitioner is permitted to file an application afresh providing the address where he would be residing pursuant to his release. As and when such application is filed, respondent authorities are directed to decide within a period of four weeks thereafter in terms of the observations made in the present order.

12. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 1, 2024

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