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

+ **W.P.(CRL) 2484/2024**

HAKIM SINGH

.....Petitioner

Through: **Mr. Sanjeev Baliyan**
(DHCLSC), Adv.

versus

**STATE OF NCT OF DELHI
AND ANR**

.....Respondents

Through: **Mr. Yasir Rauf Ansari,**
ASC for the State with Mr.
Alok Sharma & Mr. Vasu
Agarwal, Advs.
SI P Buno, PS- Madhu
Vihar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

29.08.2024

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CRL.M.A. 24145/2024 (for exemption)

1. Exemptions allowed, subject to all just exception.
2. The application stands disposed of.

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3. The present petition is filed seeking second spell of furlough.
4. The application seeking furlough was rejected on the ground that the SLP filed by the petitioner challenging his order of conviction is pending before the Hon'ble Apex Court.
5. The learned counsel for the petitioner submits that Rule 1224 of the Delhi Prison Rules does not bar the authorities to grant furlough when the petitions are pending before the Hon'ble Apex Court.



6. He submits that the said bar operates only when the appeal is pending before a High Court.
7. He relies upon the order passed by the coordinate Bench in W.P.(Crl.) 1972/2024.
8. This Court, while disposing of W.P.(Crl.) 697/2022 titled as ***Budhi Singh v. State NCT of Delhi : 2023:DHC:4365***, interpreted Rule 1224 of the Delhi Prison Rules, and observed as under:

“64. Thus, where an appeal from an order of conviction passed by the High Court has been preferred by the convict before the Hon’ble Apex Court and the same is pending before it, then ipso jure, the word High Court as appearing in the Note 2 to Rule 1224 of the Rules, would mean and include Supreme Court being the appellate court before which the appeal of the convict is pending. In such situation any direction for furlough as contemplated under Note 2 to Rule 1224 of the Rules would have to be necessarily be taken from the Hon’ble Apex Court.

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71. It is also significant to note that such rule which prevents jail authorities from considering the application pending appeals to High Court exists both in relation to Parole and Furlough. Rule 1209 of the Rules disentitles the convict of regular Parole in case appeal is pending before the High Court. The refusal of parole on the ground of pending appeal before the Hon’ble Apex Court even though the rule envisages such refusal only in case the appeal is pending in the High Court came up for consideration before this Court in the case of Basant Vallabh v. State: 2020 SCC OnLine Del 723. The coordinate bench of this Court, dismissed the petition on the ground that the appeal was pending consideration before the Hon’ble Apex Court and any such grant would amount to derogation of powers. In my opinion, the ratio laid by the coordinate bench of this Court in Basant Vallabh v. State (supra) will squarely apply to the case in hand and any exercise of powers under Note 2 to Rule 1224 of the Rules by this Court for the purpose of grant of furlough, pending an appeal before the Hon’ble Apex Court, would amount to derogation of appellate powers of the Apex Court, which precisely has been frowned upon the Constitution Bench of the Apex Court in K.M. Nanavati (supra).”

9. In view of the above, no order for release of the petitioner



can be passed in the present petition when the matter is pending before the Hon'ble Apex Court.

10. The petitioner is at liberty to file an appropriate application before the Hon'ble Apex Court.

11. The petition is dismissed with the aforesaid observations.

AMIT MAHAJAN, J

AUGUST 29, 2024
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