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

% ***Date of decision: 16th August, 2024***

+ **W.P.(CRL) 2493/2024**

GOPI CHAND @ PAPPU

.....Petitioner

Through: Counsel(Appearence not given)

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amol Sinha, ASC for the State
with SI Mahipal PS Civil lines

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 24298/2024(exemption)

1. Allowed, Subject to just exceptions.
2. The Application is accordingly disposed of.

W.P.(CRL) 2493/2024

3. A Writ Petition under Article 226 of the Constitution of India read with Section 528 BNSS, 2023 has been filed by the petitioner seeking quashing of rejection of Furlough Order No. F.10 (3472323)/CJ/LEGAL/PHQ/2024/3164 dated 16.04.2024 *vide* which his request for his release on 3rd spell of Furlough for a period of 2 weeks for re-establishing social ties with society and family members has been rejected on the ground that 'SLP (Crl.) No. 2054/2014 and Crl. Appeal No. 848/2014' of the convict is pending before the Hon'ble Supreme Court.
4. *Briefly stated*, the petitioner has been convicted *vide* judgement of



03.03.2009 & sentenced vide Order dated 07.03.2009 by Ld. ASJ, Tis Hazari Court in FIR No. 300/1984, PS, Civil Lines under Sections 302/396/201/120B/34 IPC tagged with FIR No. 190/1984, PS, Alipur under Sections 302/201/120B IPC. He has undergone incarceration of about 17 years and 06 months out of rigorous imprisonment for life and fine, without remission.

5. The petitioner preferred *Criminal Appeal No. 349/2009* before this Court which was dismissed *vide* judgement dated 02.08.2013.

6. The petitioner on 01.04.2024 filed an Application for 3rd Spell of Furlough on the ground to “*re-establish social ties with society and family members*” for a period of two weeks before D.G. (Prisons), Tihar Jail, Delhi which was rejected *vide* order dated 16.04.2024 stating as follows:

"The SLP No.2054/2014,Crl.Appeal No.848/2014 of the above said convict is pending before the Hon 'ble Apex Court, hence in view of order dated 16.05.2016 passed by the Hon'ble High Court of Delhi in WP(Crl)236/2016,case title Vikas Yadav Vs State Of NCT Delhi and order dated 03.07.2023 passed by the Hon'ble High Court of Delhi in W.P. (Crl.) 697/2022 case title Budhi Singh Vs NCT of Delhi, prison authority cannot entertain his application for grant of furlough, if a SLP is pending before Hon 'ble Supreme Court of India."

7. The petitioner submits that the respondents have erroneously placed reliance on Budhi Singh v. NCT of Delhi and Vikas Yadav v. NCT of Delhi as the Co-ordinate Bench of this court *vide* judgement dated 03.07.2023 in case of Budhi Singh (supra) has referred the issue pertaining to whether a convict whose SLP is pending before the Hon'ble Apex Court, can be granted Furlough, before the Hon'ble Division bench where it is pending consideration. The petitioner has further placed reliance Order of Ld. Coordinate Bench dated 16.10.2023 in W.P. (Crl.) No. 2221/2023, *Prem*



Shankar v. State of NCT of Delhi and Order dated 09.09.2024 in W.P. (Crl) 1972/2024 *Umesh v. State of NCT of Delhi* vide which Furlough was granted to convict even though the SLP was pending before the Hon'ble Supreme Court. The petitioner further submits that it is a matter of record that the petitioner has already been released on furlough twice before with 1st Spell of Furlough on 06.03.2024 and 2nd Spell of Furlough on 10.11.2023.

8. The petitioner further submits that rejection of Furlough as per Delhi Prison Rules, 2018 frustrates the purpose of reformation and rehabilitation of convict. Additionally, the petitioner has clean antecedents and was released several times on Furlough wherein he has surrendered on time before the jail Superintendent. He is presently working as "Factory Sahayak" in CJ-2 and maintaining good conduct inside jail.

9. The petitioner submits that the Rejection Order passed by the respondent, is contrary to rights envisaged under Article 14 of the Constitution of India and therefore a fit case for

10. ***Learned Standing counsel for the State vehemently opposes the Petition*** and submits that the SLP (Crl.) No. 2054/2014 is pending before the Hon'ble Supreme Court and therefore, this court should not grant Furlough to the petitioner. Reliance is placed on W.P. (Crl. 697/2022) *Budhi Singh v. State of NCT of Delhi*.

11. Submissions Heard.

12. Way back in 1961, the Apex Court in the case of *K.M. Nanavati vs. State of Bombay* AIR 1961 SC 112 had held that the suspension of the sentence when the Supreme Court was in seisin of the case, can be granted only by the Supreme Court itself. If in respect of the same period, the Executive were also held to have the power to suspend the sentence, it



would mean that both the judiciary and the Executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction, which could not have been intended.

These aspects have been considered in detail by the Coordinate Bench in the case of Budhi Singh vs. State of NCT of Delhi, 2023 SCC Online Del 3825 wherein it was observed as under:

*“84. In view of the specific mandate of Note 2 to Rule 1244 of the Rules, the High Court even in exercise of its plenary powers under Article 226 of Constitution of India cannot interfere with the order refusing the furlough to a convict pending his/her appeal before the Hon’ble Apex Court. This restraint would apply notwithstanding the convict making out a strong case of overwhelming mitigating circumstances acting in his/her favour. Any such exercise of power vested in High Courts under Article 226 of the Constitution of India, pending an appeal before the Apex Court, would amount to derogation of appellate powers of the Supreme Court of India and would be violative of the principle laid down by the Apex Court in **K.M. Nanavati (supra)**. Issue C, E, F & G”*

13. It was thus, observed that **Note 2 to Rule 1224** prescribes High Court as a Forum for consideration of the Application for Furlough, but High Court is prescribed only in the context of Appellate Court. **If the Appeal is pending before the Supreme Court, then it is the Supreme Court alone which is the Appellate Court before whom the application would be maintainable.** *Ipsa jure* the word *High Court* would mean and include the



Apex Court being the appellate Court before which the appeal of the convict is pending. The bare perusal of the Rules would reflect that the intention of the framers was that the Application shall not be entertained while the Appeal against conviction is pending and the power to consider such application statutorily vested upon the Appellate Authority, which may be High Court or the Apex Court. Any other interpretation would give rise to an anomalous situation for if any other interpretation is given, it would imply that the High Court would have the jurisdiction even in the matters where an Appeal is pending before the Apex Court. It would result to absurdity which definitely which could not have been intended by the framers of the Rules. It was, therefore, concluded that any Application for furlough or Parole under the Delhi Prison Rules, is maintainable only before the Appellate Court where the Appeal against the conviction, is pending.

14. The law is well defined and it is no longer *res integra* in view of the Delhi Prison Rules, 2018 read with the aforesaid judgments that the application for Furlough is not maintainable before this Court since the Appeal against the Order of conviction, is pending before the Apex Court.

15. There is no merit in the present petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 13, 2024/PT