



2025:DHC:876



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

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Date of Decision : 31.01.2025+ **W.P.(CRL) 291/2025 & CRL.M.A.2568/2025**

DEEPAK

.....Petitioner

Through: Mr. Archit Upadhayay, Adv.
(DHCLSC)

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyay,
ASC for the State**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J (ORAL)**

1. By way of the present petition filed under Article 226 of the Constitution of India read with Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS'), the petitioner seeks issuance of writ in the nature of certiorari for quashing of rejection order Ref. F.10(3738211)/CJ/Legal/PHQ/2024/8756 dated 05.12.2024, passed by the Office of Director General of Prisons, Tihar, and issuance of writ in the nature of mandamus seeking grant of second spell of furlough for a period of three weeks.

2. Brief facts of the present case are that the petitioner herein was



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convicted in case FIR No. 582/2016, registered at Police Station Shahbad Dairy, Delhi, for offence under Sections 376 of Indian Penal Code (hereafter 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012. After completion of trial on 24.07.2018, the petitioner was held guilty for the offence under Section 376(2)(i) of IPC and accordingly convicted and awarded the sentence of rigorous imprisonment for life and fine of Rs. 20,000/-, and in default of payment of fine, simple imprisonment for 60 days, vide order on sentence dated 28.07.2018. The appeal against his conviction filed by the petitioner i.e. CRL.A. 925/2018 was dismissed by this. Court on 27.04.2023, upholding the order passed by the learned Trial Court.

3. The petitioner is presently confined in Central Jail No. 03, Tihar, Delhi.

4. It is the case of the petitioner that he had applied to Director General of Prison, Head Quarter, Tihar for grant of second spell of furlough for a period of three weeks, however, *vide* order dated 05.12.2024, the same was rejected on the following grounds:

- i) CONVICT Deepak Kumar S/o Deen Dayal Dass is undergoing life sentence and has completed 8 years in custody.
- ii) The convict committed rape of 05 year old girl. The convict lived in the neighborhood of victim.
- iii) The probation office has not recommended for grant of furlough.
- iv) Furlough is a privilege and not a right under the prisons laws. No doubt, the convict has undergone the requisite period of sentence as convict for becoming eligible for furlough but offence committed by him is ghastly perverse and heinous and shakes the conscience of a prudent person. Such persons are always danger to the society and can rake up the sentiments of the public in the vicinity of his stay.



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v) Therefore, his furlough is rejected.

5. It is submitted by the learned counsel appearing for the petitioner that the petitioner has been in judicial custody for about 8 1/2 years. It is further stated that the conduct of the petitioner in the prison has always been satisfactory and nothing adverse has ever been recorded against him by the jail authorities. It is also submitted that he does not have a single punishment against him since his incarceration of more than 8 years and has been working as a Ward Sahayak. Therefore, It is prayed that the petitioner be granted furlough.

6. On the other hand, the learned ASC for the State has opposed the present petition and argued that taking into account the seriousness of the offence committed by the petitioner, he should not be granted furlough.

7. The grounds on which the petitioner's plea for furlough has been rejected are that (i) the offence convicted by him is serious, (ii) the convict lived in the neighbourhood of the victim, and (iii) probation officer has not recommended for grant of furlough.

8. Firstly, this Court notes that the petitioner has furnished address of his maternal uncle at Bihar and states that he will be staying at the said address during the period of furlough. This address has not been disputed by the State.

9. Secondly, Rule 1223 of Delhi Prison Rules, 2018 provides the eligibility criteria for grant of furlough, which reads as under:



“Rule 1223: In order to be eligible to obtain furlough, the prisoner must fulfil the following criteria:-

A. Good conduct in the prison and should earned rewards in last 3 Annual good conduct report and continues to maintain good conduct.

B. The prisoner should not be a habitual offender.

C. The prisoner should be a citizen of India....”

10. This Court takes note of the fact that the petitioner has been in judicial custody for 8 ½ years. His conduct in the jail has always been satisfactory. He has been working as ward sahayak and in the last more than 8 years, he has never been awarded any punishment inside the jail. He is not a habitual offender, and has earned three annual good conduct reports, which also entitle him to furlough under Rule 1223 of Delhi Prison Rules, 2018. The petitioner was also granted furlough by this Court vide order dated 28.11.2024 passed in W.P.(C). 3719/2024. The petitioner thereafter, was released on furlough; he had stayed in Bihar, and had surrendered on the expiry of period of furlough.

10. Considering the fact that the petitioner undertakes to stay at his maternal uncle's home in Bihar whereas the victim stays in Delhi, and since the address of his maternal uncle at Bihar had been verified by the State earlier, this Court directs that the petitioner be released on second spell of furlough for a period of three weeks, on the following terms and 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



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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.

11. In above terms, the present writ petition stands disposed of.

12. A copy of this judgment be sent by the Registry to the Jail Superintendent concerned.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 31, 2025/VLD