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

+ **W.P.(CRL) 419/2025**

HEMANT KUMAR

.....Petitioner

Through: Mr. Zeeshan Diwan and Mr. Harsha,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

04.03.2025

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By way of the present petition filed under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks release on his 1st spell of furlough for a period of 03 weeks, which has been denied *vide* order dated 15.01.2025 passed by the Jail Authorities.

2. The petitioner is serving life sentence in case FIR No. 58/2009 registered under sections 302/392/397/411/34 of the Indian Penal Code, 1860 and 25/27 of the Arms Act, 1959 at P.S.: Anand Vihar, Delhi.
3. Notice on this petition was issued on 07.02.2025; pursuant to which Status Report dated 28.02.2025 has been filed and Nominal Roll dated 28.02.2025 has been received from the concerned Jail Superintendent.
4. Mr. Zeeshan Diwan, learned counsel appearing for the petitioner submits, that a perusal of impugned order dated 15.01.2025 would



show that the ground on which the jail authorities have declined furlough is that the petitioner falls in the category of a “*habitual offender*” since on 09.10.2021, while he was on emergency parole, the petitioner was re-arrested in another case bearing FIR No. 686/2021 registered under section 25 of the Arms Act, 1959 at P.S. Nand Nagri, Delhi.

5. Mr. Deewan however argues, that in the second case, viz. FIR No. 686/2021 in which the petitioner was re-arrested for the offence under section 25 of the Arms Act 1959, he pleaded guilty and was let-off on the period already undergone *vide* order dated 20.08.2022 passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi.
6. Furthermore, it is submitted that the petitioner’s conduct that was subject matter of FIR No. 686/2021 amounts to a prison offence, for which the petitioner was issued a Punishment Ticket dated 18.10.2021, which punishment ticket was subsequently waived by the learned District & Sessions Judge.
7. Counsel submits therefore, that insofar as the second FIR is concerned, the petitioner stands absolved of the same.
8. Mr. Deewan further points-out that Nominal Roll dated 28.02.2025 records that the petitioner’s overall jail conduct has been ‘satisfactory’; that he is serving as a *sahayak* in prison; that he has no other criminal involvement; and that the petitioner has been granted parole/furlough on 05 earlier occasions.
9. Most importantly, it is pointed-out that the petitioner has served more than 16 years of actual custody in the subject FIR, without counting remission; and with remission, that period is about 18½ years.



10. Learned counsel for the State on the other hand submits, that Rule 1223 of the Delhi Prison Rules, 2018 mandates that to be eligible for release on furlough a prisoner must have earned *inter-alia* 03 annual 'good conduct' reports and should not be a 'habitual offender', which term has been defined in Rule 2(20) of the Delhi Prison Rules.
11. After hearing the rival contentions, this court is of the view that it is debatable whether the petitioner would fall within the definition of a 'habitual offender' for purposes of Rule 1223 of the Delhi Prison Rules. In any case, this court cannot lose sight of the fact that the petitioner has already served more than 16 years of actual judicial custody; and when the remission earned is counted, the period of judicial custody is about 18½ years.
12. Furthermore, a perusal of Nominal Roll dated 28.02.2025 shows, that the petitioner has not been released on parole/furlough ever-since he was re-arrested in FIR No. 686/2021 on 09.10.2021, *i.e.* in the last more than 03 years.
13. As a sequitur to the above, this court is persuaded to allow the present petition, thereby setting-aside impugned order dated 15.01.2025 passed by the Office of the Director General of Prisons; and granting to the petitioner – **Hemant Kumar s/o Raj Kumar** – *furlough* for a period of *03 weeks* from the date of his release subject to the following conditions :
 - 13.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 01 surety in the like amount from a family member, to the satisfaction of the Jail Superintendent;



- 13.2. The petitioner shall not leave the NCT of Delhi without permission of this court and shall *ordinarily* reside at his address as per prison records;
- 13.3. The petitioner shall present himself before the S.H.O., P.S.: Anand Vihar every Thursday between 11 am and 11:30 am to mark his presence. However, he will not be kept waiting longer than an hour for this purpose;
- 13.4. The petitioner shall furnish to the S.H.O., P.S.: Anand Vihar a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 13.5. If the petitioner has a passport, he shall surrender the same to the Jail Superintendent;
- 13.6. The petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any; and
- 13.7. Upon expiry of the period of furlough, the petitioner shall surrender before the Jail Superintendent.
14. Petition stands disposed-of in the above terms.
15. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 4, 2025

V.Rawat