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

+ **W.P.(CRL) 692/2025**

ASHOK VISHWAKARMA @ SIR JIPetitioner

Through: Mr. Shannu Baghel, Mr. Sudhir Kumar, Mr. Ganpat Ram and Mr. Vivek Kumar, Advocates.

versus

STATE NCT GOVT OF DELHIRespondent

Through: Mr. Sanjeev Bhandari, ASC.(Crl.), Mr. Arjit Sharma and Mr. Nikung Bindal, Advs.
SI Rajesh Kumar, PS Najafgarh.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

25.04.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India read with Section 528 of the CrPC has been filed seeking the following prayers: -

“a) issue a writ in the nature of Certiorari quashing the rejection order
ORDER F. 10 (003472152)/CJ/Legal/PHQ/2025/M-1354
Dated:14.02.2025 passed by the respondent; and

b) issue a writ in the nature of Mandamus directing the respondent to release the petitioner on furlough for a period of 03 weeks for re-establishing social and family ties on furnishing the cash surety as earlier released on cash surety by respondent and;;

c) Pass any other order or further orders, which this Hon'ble Court deems fit and proper on the facts and in the interest of justice”

3. Learned counsel for the petitioner submits that the latter had filed an application for grant of furlough before the competent authority on 23.01.2025, however, the same was rejected *vide* order ref. No. F. 10

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(003472152)/CJ/Legal/PHQ/2025/M-1354 dated 14.02.2025. The said order reads as under: -

“Ref: F.14/SCJ-14/Furlough/AS(CT)/2024/5964, Dated 23.11.2024.

That convict Ashok Vishwakarma @ Sirji s/o Ramapati Vishwakarma was released on furlough for 02 weeks w.e.f. 20.11.2023 to 05.12.2023, thereafter, he was exempted from surrender by Hon’ble Apex Court till 01.10.2024. On 01.10.2024, the Hon’ble Supreme Court dismissed his petition and directed him to surrender immediately, but he surrendered late by 04 days on 05.10.2024. Since, he had violated the terms and conditions of furlough, his request for 1st spell of furlough for current conviction year stands rejected. The convict may be informed under proper acknowledgment.”

4. Learned counsel appearing on behalf of the petitioner submits that the competent authority has erroneously rejected the petitioner’s application seeking furlough on the ground that he had surrendered late by 04 days on 05.10.2024, when he was directed to surrender by the Hon’ble Supreme Court on 01.10.2024, as an earlier order dated 27.12.2024 passed by the competent authority on the same ground was set aside by a Coordinate Bench of this Court in W.P.(CRL) 136/2025 *vide* order dated 16.01.2025. It is further submitted that *vide* the said order, the petitioner was granted liberty to move a fresh application for furlough before the competent authority and the same has now been rejected by the competent authority by passing the aforesaid impugned order on the same ground. It is further submitted that the petitioner has undergone incarceration for more than 25 years including the remissions earned by him during the said custody period and was released on parole and furlough on earlier occasions and has not misused the liberty granted to him.
5. *Per contra*, learned Additional Standing Counsel for the State has opposed the present petition as the petitioner has surrendered after a delay of

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04 days despite the directions given by the Hon'ble Supreme Court and has thus, become ineligible for grant of further relief of furlough. He has handed over in Court today nominal roll dated 24.04.2025 and the same is taken on record.

6. Heard learned counsel for the parties and perused the record.

7. The Coordinate Bench of this Court in W.P.(CRL) 136/2025 *vide* order dated 16.01.2025, while setting aside the order dated 27.12.2024 passed by competent authority, had passed the following order: -

“10. Furthermore, the explanation given is that the Petitioner was based in Lucknow, Uttar Pradesh and it took him four days to surrender when the Order got uploaded on 05.10.2024 and when he saw the same, he surrendered himself before the concerned Jail Superintendent.

11. It is submitted that it cannot be overlooked that there was a stay for a period of almost 11 months. The Petitioner being based in Lucknow, Uttar Pradesh and was intimated by his counsel about the dismissal of his SLP on 01.10.2024 before the Apex Court which directed the Petitioner to surrender. It would have taken him one day to travel to Delhi and to surrender, had he seen the Order on 05.10.2024, when it got uploaded. In fact, when he came to know about the Order on 01.10.2024 itself, there was no reason for him to surrender after four days. The Furlough, therefore, has been rightly rejected.

12. **Submissions heard.**

13. In terms of Order dated 01.10.2024 of the Apex Court, the surrender was to be made forthwith. It cannot be overlooked that the Petitioner was based in Lucknow, Uttar Pradesh.

14. The delay of 4 days in surrender cannot be held to be so motivated and contumacious as to deny him the right of Furlough in future.

15. In view of above, the impugned Order dated 27.12.2024 rejecting the Furlough Application of the Petitioner, is hereby quashed and set aside.

16. The Petitioner is at liberty to move a fresh Application for Furlough before the Jail Authority which may be considered in accordance with law.”

(emphasis supplied)

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8. In pursuance of the liberty granted by the Coordinate Bench *vide* the aforesaid order, the petitioner had filed a fresh application seeking furlough before the competent authority on 23.01.2025. The same has also been rejected by the competent authority on the same ground, based on which earlier application filed by the petitioner was rejected on 27.12.2024. The said order dated 27.12.2024 was set aside by Coordinate Bench on 16.01.2025 with the aforesaid observations. It reflects complete non-application of mind by the competent authority.

9. Perusal of the nominal roll dated 24.04.2025 shows that the present petitioner, as on 24.04.2025, has undergone incarceration for more than 25 years including the remissions earned by him during the said custody period. It further shows that he was released on parole and furlough on earlier occasions and he has not misused the liberty granted to him and has duly surrendered after the expiry of the same. Insofar as the delay in surrender is concerned, the same has already been dealt with and condoned by the Coordinate Bench of this Court *vide* order dated 16.01.2025, as noted hereinabove.

10. In the totality of the facts and circumstances of the case, the present petition is allowed and the petitioner is directed to be released on furlough for a period of 3 weeks, from the date of his release, on his furnishing a personal bond in cash of Rs. 10,000/- along with cash surety of the like amount to the satisfaction of the concerned Jail Superintendent, further subject to following conditions: -

- i. The petitioner shall report to the SHO of the local police station of his native place on every Sunday between 10:00 AM to 11:00 AM

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during the period of furlough and the concerned Officer shall release him after completion of necessary formalities.

ii. The petitioner shall not leave the country during the period of furlough, without the prior permission of this Court.

iii. The petitioner shall furnish a telephone/mobile number to the Jail Superintendent as well as SHO of the local police station of his native place, 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. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

v. The petitioner is directed to surrender before the jail authorities after the expiry of the period of furlough.

11. The petition is allowed and disposed of accordingly.

12. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

13. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

APRIL 25, 2025/ns/kr

Click here to check corrigendum, if any