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

+ **W.P.(CRL) 1286/2025&CRL.M.A. 12151/2025**

BIRBAL

.....Petitioner

Through: Mr. Abhir Datt and Mr. Debayan
Gangopadhyay, Advocates, DHCLSC.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC
(Crl.) for the State with Mr. Arjit
Sharma and Mr. Nikunj Bindal,
Advocates.
Insp. Pradeep Sharma, P.S. Kirti
Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

23.04.2025

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1. This hearing has been done through hybrid mode.
2. The present writ petition under Article 226 of the Constitution of India read with Section 528 of the BNSS seeks the following prayers:
 - a. Issue a writ in the nature of certiorari quashing the order No. F.10(3774653)/CJ/LEGAL/PHQ/2024/6763, dated 01.10.2024, passed by the respondent.
 - b. Issue a writ in the nature of Mandamus directing the respondent to release the petitioner on furlough for a period of 03 weeks.
 - c. Pass any other order or orders, which the Hon'ble Court deemed fit and proper in the interest of justice;
3. Learned counsel appearing on behalf of the petitioner submits that his application for furlough was rejected by the competent authority *vide* order No. F.10(3774653)/CJ/LEGAL/PHQ/2024/6763 dated 01.10.2024 on the



ground that the offence committed by the present petitioner of rape and murder of three years old girl falls under Rule - 1225 of Delhi Prison Rules, 2018.

4. It is further submitted that the aforesaid order has failed to appreciate that the purpose behind the enactment of provision of furlough is to facilitate maintenance of family and social ties of the convicts, supporting their rehabilitation and reintegration into the society and contributing to their overall well-being and emotional health. It is submitted that the present petitioner has been in custody for more than 12 years and matches the eligibility criteria to obtain furlough as laid down in Rule 1223 of the Delhi Prisons Rule, 2018

5. It is pointed out that the co-accused in the present case has been granted furlough by a Coordinate Bench of this Court in W.P.(Crl) 372/2025 Jamahir @Jawahar Paswan v. State NCT of Delhi *vide* order dated 11.03.2025. The observations in the said order are as as under:

“2. The application for grant of 1st spell of furlough was rejected by the competent authority on 01.10.2024 for the reason that the appellant had committed rape and murder of three years old girl and the case fell under Rule - 1225 of Delhi Prison Rules, 2018.

3. Mr. Arya, learned counsel appearing for the respondent supports the impugned order and states that furlough is a privilege and not a right under Delhi Prison Rules. He further states that the offence committed by the petitioner is heinous and shakes the conscious of a prudent man.

4. Ms. Nandwani relied on numerous judgments and more particularly on ***Sanjay Kumar Valmiki v. State of NCT of Delhi, W.P.(Crl.) No. 2771/2022*** and relevant portion is extracted below:-

“14 In light of the judgment of the Supreme Court in Atbir (supra) as well as the Delhi Prison Rules, 2018, it is no longer res integra that furlough is an incentive towards good jail conduct and the same can be granted even if the convict is not entitled to any remission and



has been awarded imprisonment for life. The Supreme Court goes on to observe that even if a convict is released on furlough, he cannot seek remission as he has been awarded imprisonment for life. The objectives of granting furlough have been enumerated in Rule 1200 of the Delhi Prison Rules, 2018. The whole purpose and intent of granting furlough is based on the reformatory approach and it is considered to be an incentive for maintaining good jail conduct. Furlough not only helps the convict in maintaining links with his family but also helps in his integration with the society.

16 In the present case, there cannot be any dispute with regard to the fact that the petitioner herein was convicted of a gruesome offence of having committed rape and murder of a minor and for the said offence, the petitioner has been awarded imprisonment for life without remission for a period of 25 years along with fine. In light of the legal principles laid down by the Supreme Court in *Atbir* (supra), the submission of the learned ASC that the furlough cannot be granted to the petitioner in view of the gruesome crime committed by the petitioner cannot be accepted. Both *Atbir* and *Chandrakant Jha*, were convicted of multiple murders and yet the Supreme Court and the Division Bench of this Court respectively held that they were entitled to furlough. 17. The judgment in *Atbir* (supra) was also followed by this Bench in W.P.(CRL) 2745/2023 titled *Kali Charan @ Kalka Prasad v. State of NCT of Delhi*, wherein the petitioner was convicted of committing rape of a minor under Section 6 of Prevention of Children from Sexual Offences, 2012 and was awarded imprisonment for ten years. 18 In my considered view, only on the basis that the convict has committed a gruesome crime many years ago, it cannot be said that his temporary release on furlough would be against the interest of the society. There cannot be any presumption that the said convict will again commit a similar crime or create law and order problem in the society. There is no gainsaying that the furlough is granted to a convict undergoing long term imprisonment and long term imprisonment is awarded only in cases where gruesome



crimes have been committed. In fact, depriving furlough to a convict, who is undergoing long term imprisonment, would be counterproductive to the reformatory approach and would also take away the motivation to maintain good conduct inside the jail.”

5. A perusal of the judgment shows that furlough can be granted even in cases involving heinous and gruesome crimes as the whole purpose and intent of granting furlough is reformatory approach “the grant of furlough helps in maintaining ties with the family as well as integration with the society.”

6. It is further submitted that *vide* order dated 03.04.2025 in CrI. MA. 10225/2025 in W.P. (CrI) 372/2025 the aforesaid order was modified by allowing the said petitioner to deposit cash surety.

7. As per the nominal roll received from the concerned Jail Superintendent, Central Jail no. 3, Tihar, New Delhi, dated 23.10.2024, the petitioner has been in judicial custody for more than 14 years as on 22.10.2024 including the remission earned during the said custody period. The overall conduct as reflected from the nominal roll with respect to the present petitioner is stated to be satisfactory.

8. In view of the aforesaid, the present petition is allowed. The petitioner is enlarged on furlough for a period of three weeks from the date of release, subject to furnishing a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) with cash surety of the like amount to the satisfaction of the Jail Superintendent, subject to following conditions:

- i. The petitioner shall furnish his cellphone number to the concerned Investigating Officer (‘IO’). 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.
- ii. The petitioner shall not leave the country without the permission



of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned Jail Superintendent.

iii. The petitioner will furnish his permanent address to the IO and in case he changes his address, he will inform the IO concerned.

iv. The petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any.

v. The petitioner shall not indulge in any act or omission that is unlawful during the period of furlough.

vi. The petitioner shall surrender after the expiry of 3 weeks of furlough.

9. The petition is allowed and disposed of accordingly.

10. Pending application(s), if any, are also disposed of.

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

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

AMIT SHARMA, J

APRIL 23, 2025

Click here to check corrigendum, if any