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

+ **W.P.(CRL) 2168/2024**

BALJEET MALIK @ POPPY

.....Petitioner

Through: **Mr. Gaurav Jain & Mr. Kishlaya
Mudgal, Advs.**

versus

STATE (NCT OF DELHI)

.....Respondent

Through: **Ms. Rupali Bandhopadhyaya, ASC
(Crl.) for the State with Mr. Abhijeet
Kumar and Mr. Anurag Arora,
Advocates
SI Mahesh Kumar PS Vasant Kunj**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **04.03.2025**

1. The present petition has been filed seeking the following relief:

- a) Issue a writ in the nature of Certiorari quashing the Order no F.10(3768756)/CJ/LEGAL/PHQ/2024/4418DATED 31.05.2024 passed by the respondent;
- b) Issue a writ in the nature of mandamus directing the respondent to release the petitioner on **1st Spell of furlough of 03 weeks** in the interest of justice;

2. Learned counsel for the Petitioner states that competent authority vide order dated 31.05.2024 has declined the application of the Petitioner, seeking grant of furlough in view of the Rule 1223 (II) of Delhi Prison Rules, 2018 recording that since the Petitioner is a habitual offender and had been convicted under Section 302 of the Indian Penal Code, 1860 (IPC) in



two different criminal cases, therefore, he is not entitled for furlough.

3. He states that there was an FIR no. 481/2008 registered against the Petitioner inter-alia under Sections 302/411/34 of IPC and Section 3(1)(i)/3(2)/3(5) of the Maharashtra Control of Organized Crime Act, 1999 as extended to the territories of Delhi at P.S. Vasant Kunj, Delhi, which has resulted in a conviction dated 25.11.2023. He states that however an appeal is pending against the said conviction and the Division Bench of this Court vide order dated 12.02.2024 in CRL. A. 64/2024 has already suspended his sentence.

4. He states that the subject matter of the present petition is the Petitioner's conviction in FIR no. 69/2009 also registered under Section 302 IPC at P.S. Vasant Vihar, wherein the Petitioner was convicted on 22.08.2016. He states that as on date the Petitioner has already undergone actual judicial custody of 15 years 7 months and 19 days as on 21.11.2024 and has earned a remission of 2 years 5 months and 10 days; therefore, over-all period of sentence served would be around 18 years.

5. He states that the Petitioner was granted interim bail in the year 2014 and 2017, wherein the Petitioner duly surrendered back. He states that the Trial Court in its order dated 22.08.2016, while convicting the Petitioner has specifically noted at paragraph nos. 34 and 35 that on the basis of PSR¹ of Probation Officer the Petitioner herein has the chance of reformation.

6. He states that conviction in the FIR No. 481/2008 pertains to an incident which is prior to the incident, which is subject matter of FIR no. 69/2009.

¹ Pre-Sentence Report



7. He states that Petitioner's father and mother are willing to furnish surety and he will be living with his parents at the address mentioned in the Nominal Roll and therefore may be granted an opportunity to avail furlough.

8. In reply, learned ASC submits that the details of sureties and address have been verified. He however reiterates that in view of 2nd conviction on 25.11.2023 in FIR No. 481/2008, the impugned order is correct in law and in facts.

9. This Court has considered the submission of the parties.

10. A perusal of the Nominal Roll shows that the Petitioner is working as a Langar Sahayak and his jail conduct in the last one year i.e., 2024 has been reported to be satisfactory. The last punishment ticket issued to the Petitioner was in the year August 2012. The Petitioner has been granted interim bail in 2014 and 2017 and has duly complied with the conditions of the interim bail.

11. This Court finds merit in the submission of the Petitioner that the offence which is subject matter of FIR No. 481/2008 pre-dates the offence which is subject matter of the present FIR No. 69/2009. The Petitioner's sentence in FIR No. 481/2008 has been suspended by the Division Bench vide order dated 12.02.2024 and therefore placing reliance on the suspended sentence to deny the plea for furlough has the effect of negating the order dated 12.02.2024.

12. The Trial Court in the order of conviction dated 22.08.2016 in FIR No. 69/2009 on the basis of the PSR submitted by the Probation officer has opined that the Petitioner is capable for reformation and has awarded sentence accordingly. The said PSR report is subsequent to the offence for which the Petitioner has been tried in both the FIRs. The findings of the



Trial Court at paragraph 34 and 35 have to be given due consideration while considering the Petitioner's application for parole and/or furlough.

13. Thus, keeping in view the observations made by the Trial Court at paragraphs 34 and 35 while awarding sentence in the order of conviction dated 22.08.2016 and the conduct of the Petitioner, when he was enlarged on interim bail on 2014 and 2017; as well as the fact that it is the Petitioner's parents who are willing to stand as surety for him; this Court is of the opinion that Petitioner is entitled to the relief of furlough for a period of three weeks.

14. Accordingly, this Court deems it appropriate enlarging the Petitioner on 1st spell of furlough for three (3) weeks on furnishing a bond of Rs. 25,000/- with two sureties (of the father and mother) of the like amount to the satisfaction of the Jail Superintendent subject to the following conditions: -

- i. During the period the petitioner remains out on furlough, the petitioner shall report to the SHO, PS Vasant Vihar, every Monday at 10:00 A.M, and will not be kept waiting for more than an hour.
- ii. The petitioner shall also provide the SHO, PS Vasant Vihar, with mobile telephone number, which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the SHO concerned. The number shall also be provided to Jail Superintendent.
- iii. The petitioner shall not leave NCT of Delhi during the period of furlough, without the prior permission of this Court.



- 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 in FIR No. 69/2009 and FIR No. 481/2008.
- v. The petitioner is directed to surrender before the jail authorities at the expiry of the period of parole.

15. The competent authority shall bear the aforesaid findings with respect to FIR No. 481/2008, while considering any future application of the Petitioner for furlough and parole.

16. Accordingly, the petition is disposed of.

17. Pending applications (if any) are also disposed of as being rendered infructuous.

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

19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MARCH 4, 2025/hp/AKT

Click here to check corrigendum, if any