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

Date of decision: 24.02.2025

+ **W.P.(CRL) 4027/2024**

CHANDER PRAKASH ALIAS PAPPU

.....Petitioner

Through: **Ms. Sunita Arora, Advocate**
(DHCLSC)

versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Mr. Amol Sinha, ASC (Crl.) for the**
State with Mr. Kshitiz Garg, Mr.
Ashvini Kumar, Ms. Chavi Lazarus,
Ms. Sanskriti Nimbekar and Mr.
Rahul Kochar, Advocates
Insp. Mukesh Kumar, P.S. Uttam
Nagar

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition has been filed seeking quashing of the order dated 05.12.2024 passed by the competent authority declining the Petitioner's request for releasing him on furlough on cash surety along with a personal bond.
2. It is stated in the petition that the Petitioner was released on furlough multiple times in the year 2023-2024. It is stated that on these occasions, the Petitioner had duly furnished the surety through his cousin brother.
3. It is stated that the Petitioner's family comprises of his wife, two major sons and one major daughter. However, they are unwilling to furnish his surety. It is stated that the Petitioner is presently working in a weaving



unit inside the jail and earns a monthly amount of Rs. 8,000/- and willing to give a cash surety. The relevant averments are made at paragraph nos. 7, 10 and 11 of the petition.

4. Learned ASC has placed the status report enclosing the statement of the Petitioner's wife, Mrs. Anita.

5. A perusal of the status report shows that Mrs. Anita is a 50-year-old woman residing in Delhi itself at A-52, 2nd floor, Ram Nagar, Om Vihar, near Metro Pillar No. 704, Uttam Nagar, Delhi. Her statement records that her elder son is gainfully employed in a private company and her younger son is 28 years old and is studying for MBA. Her daughter is also gainfully employed and is running a travel agency.

6. At this juncture it would be relevant to refer to the case **Anil Vishwanath Pathwe v. D.I.G. Prison, Western Region, Pune and Another**¹, wherein the Division Bench of the High Court of Bombay opined that mere inability of a convict to furnish surety cannot be the sole reason for exercising the discretion of dispensing the condition of providing surety. The relevant paragraph of the said judgment reads as under: -

“11.As discretion is bestowed on the Competent Authority to dispense with the requirement of furnishing of surety in exceptional cases, in our opinion, however, that discretion will have to be exercised, keeping in mind not only the welfare of the prisoner but also the larger public interest. The discretion to be exercised by the Sanctioning Authority of dispensing with the requirement of furnishing surety by the prisoner can, however, be only in exceptional cases and not as a rule. Even in those exceptional cases, the Sanctioning Authority has to be satisfied and must record reasons as to why in its opinion the requirement of furnishing surety deserves to be dispensed with in the facts and circumstances of that case and secondly, whether the other conditions imposed on the prisoner for

¹ 2011 SCC OnLine Bom 1436.



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release will be sufficient to secure his return to jail for undergoing the remaining sentence, and that he would not abscond or flee from the ends of justice and defeat the order of conviction and sentence passed by the Court of competent jurisdiction operating against him. **Thus, the fact that the prisoner is unable to furnish surety, per se, cannot be the sole basis to exercise discretion in favour of the prisoner. It is well-established position that the individual rights must yield to the interest of the community.**

(Emphasis supplied)

7. A Co-ordinate Bench of this Court in the case of **OBI Ogochukwa Stephen v. GNCTD²**, while analysing the relevance and importance of the surety in cases where an undertrial or a convict is out from the custody of Court, noted as under: -

“10. This court had therefore observed that in view the foregoing fundamental principle, a prayer that an undertrial be released only upon depositing cash in lieu of furnishing a surety bond from a third person, **means that there would be no third person taking responsibility that the person on bail would be available for further proceedings in court at a subsequent time.**

.....

27.3. **Nonetheless, this court maintains that the condition of furnishing surety is not purposeless; and it stems from the fundamental principle of bail, namely of releasing a prisoner from the court's custody to that of the surety, whose primary role is to ensure the prisoner's presence for the trial or for undergoing sentence. Thus, the waiver of this requirement cannot be a matter of entitlement, to be granted for the asking;**

27.4. However, in the interests of individual liberty, the law allows that if a person cannot find a surety due to financial constraints or lack of local contacts (for example, if they are outsiders to the city), they should not be denied the benefit of bail merely because they cannot meet a condition that is beyond their control. **This principle is however founded on the genuine inability of a prisoner to fulfil a given condition and is not meant to feed-into a mere excuse for non-compliance.** This court believes that any waiver of a bail condition must not compromise the one most important legal

² 2024 SCC OnLine Del 7257.



requirement that a prisoner must make himself available for trial and for compliance with a sentence imposed;”

(Emphasis supplied)

8. In the present case, the Petitioner was granted furlough for a period of two weeks by order dated 30.09.2024 passed by the competent authority on a condition that he shall furnish one surety of Rs. 10,000/- along with a personal bond in the like amount. Since, the Petitioner was unable to arrange a surety, as his family has refused to stand surety for him as they are in a poor financial condition, he filed an application before the competent authority for modification of order dated 30.09.2024 thereby, requesting for his release on furlough on personal bond only. However, the said application was rejected by the competent authority by its order dated 05.12.2024 on the ground that the Petitioner is serving life sentence and still has large sentence to undergo.

9. Keeping in view the facts and circumstances of this case, it is evident that the Petitioner’s family has the means and finances to stand as surety for him. The Petitioner is a resident of Delhi and his family members are also resident of Delhi. No discernable reason has been offered from his family members for not coming forward to furnish the surety. The learned counsel for the Petitioner during arguments has categorically submitted that it is the wife of the Petitioner who is following up with the counsel for this application. The Petitioner himself earns in the jail, which presumably he transfers to his wife. The Petitioner in past has always furnished a surety for availing furlough and parole; no reasonable explanation is furnished for not providing the surety. In the opinion of this Court, the unwillingness of the Petitioner’s family members to furnish surety cannot be the reason for not



complying with the condition of surety and the said reason cannot be a ground for this Court to exercise its discretion to dispense with the surety in place of personal bond as recorded in the order dated 30.09.2024.

10. In the facts of this case the Petitioner has failed to satisfy this Court that he is unable to furnish a surety.

11. In the overall conspectus of fact and law as discussed above the present petition stands dismissed.

MANMEET PRITAM SINGH ARORA
(JUDGE)

FEBRUARY 24, 2025/msh/MG

Click here to check corrigendum, if any