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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) 697/2022**

BUDHI SINGH Petitioner

Through: Mr. Aman Panwar, Adv. DHCLSC
with Mr. Harsh Gattani & Mr.
Shivam Singh Baghel, Adv.

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Nandita Rao, ASC for State
with Mr. Amit Peswani, Adv.

+ **W.P.(CRL) 1044/2022**

SURESH CHAND SHARMA Petitioner

Through: Mr.Rohan J.Alva, Adv. (DHCLSC)

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Nandita Rao, ASC for State
with Mr. Amit Peswani, Adv.

+ **W.P.(CRL) 1067/2022**

JAI PAL SINGH Petitioner

Through: Mr. Arjun Malik, Adv. DHCLSC

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Nandita Rao, ASC for State
with Mr. Amit Peswani, Adv.

+ **W.P.(CRL) 997/2022**

BASANT VALLABH Petitioner

Through: Mr. Zeeshan Diwan, Adv.

DHCLSC

versus

STATE OF NCT OF DELHI Respondent

Through: Ms. Nandita Rao, ASC for State

with Mr. Amit Peswani, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
02.12.2022

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1. From the preliminary arguments advance on behalf of the parties, following issues are framed: -

- (a). Whether the principle of 'derogation of power' as laid down in the judgment of the Hon'ble Supreme Court of India in *K.M. Nanavati v. The State of Bombay*, AIR 1961 SC 112 is applicable in cases where a prisoner seeks to apply for release on furlough under the Delhi Prison Rules, 2018 when an appeal against their order of conviction is pending adjudication in the Supreme Court of India?
- (b). Whether Note 2 to Rule 1224 in the Delhi Prison Rules, 2018 should be strictly interpreted and thus the words High Court cannot be interpreted as including the Supreme Court of India, even in case of a statutory appeal before the Supreme Court?
- (c). Is there a violation of Article 14 of the Constitution of India if Note 2 to Rule 1224 of the Delhi Prison Rules is interpreted as barring the right of a prisoner to apply for release on furlough, when an appeal against their order of conviction is pending adjudication in the Hon'ble Supreme Court of India?
- (d). Whether the High Court under Article 226 of the Constitution has the power to grant furlough. If so, can this power be exercised during the pendency of an appeal in the Supreme Court of India?
- (e). Is there a violation of Article 21 of the Constitution of India if Note 2 to Rule 1224 of the Delhi Prison Rules is interpreted as barring the right of a prisoner to apply for release on furlough, when an appeal against their order of conviction is pending adjudication in the Hon'ble Supreme Court of India?
- (f). Whether denial of furlough, on account of pendency of

an appeal in the Supreme Court of India, despite good conduct earned by the convict, would run contrary to the theory of reformative approach and thereby violating Rules 1199 and 1200 of the Delhi Prison Rules, 2018?

(g). Whether the jurisprudence on parole can be applied to furlough since furlough does not involve suspension of sentence?

2. Looking at the nature of dispute and issues raised, this Court consider it apposite to appoint Mr.Siddharth Dave, Sr. Advocate (Mob No. 9810042855) as an *amicus curiae* to assist the court in the present proceedings.
3. Let the record of the case be supplied to the learned *amicus curiae*, Mr.Dave within one week from today.
4. List for arguments on 21.12.2022 at 2.30 pm.

AMIT MAHAJAN, J.

DECEMBER 2, 2022

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