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

+ **W.P.(CRL) 3087/2023**

RAKESH @ DALU

..... Petitioner

Through: Mr. Kunal Malhotra, DHCLSC, Mr.
Ravinder Gaur & Mr. Lalit
Choudhary, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rahul Tyagi, ASC for the State
with Insp. Rajendra Kumar, P.S.
Karawal Nagar.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

23.11.2023

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1. By way of this writ petition filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C., the petitioner is seeking furlough for a period of three weeks.

2. It is submitted by the learned counsel for the petitioner that petitioner was denied furlough vide impugned order dated 03.10.2023 only on the ground that the petitioner jumped the parole granted by this Hon'ble Court. It is further submitted that this fact was duly considered by this Hon'ble Court while granting the parole three years later vide order dated 09.02.2023. It is further submitted that petitioner is in judicial custody since 07.07.2009 and has undergone approximately 12 years of incarceration and has earned approximately



2 years of remission. It is further submitted that petitioner has also earned appreciation certificate for his good conduct inside the jail. It is further submitted that the petitioner has a family comprising of wife and two children to support and for their subsistence he used to send money by working as “Bakery Sahayak” in the jail.

3. On the other hand, learned Additional Standing Counsel opposes the present petition submitting that when the petitioner was released on parole, he did not surrender on due date and jumped the parole and was later arrested on 24.07.2020.

4. I have perused the nominal roll as well as the order dated 09.02.2023. As per the nominal roll dated 13.11.2023, the petitioner has undergone 11 years, 6 months and 8 days actual incarceration and he has also earned 1 year 11 months and 7 days remission. As far as the contention of learned Additional Standing Counsel on non surrender of the petitioner on time is concerned, this contention of the learned ASC was duly considered by the co-ordinate Bench of this Court while granting parole vide order dated 09.02.2023, hence, the same contention cannot be an obstacle every time in granting furlough. Moreover, the petitioner has also earned appreciation certificates after he was rearrested on 24.07.2020.

5. Furthermore, the Reliance can be placed on the judgment passed by the Hon’ble Supreme Court in *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55. The relevant portion is reproduced hereunder:

"19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual



offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behavior shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments."

6. Therefore, keeping in view the entire facts and circumstances; the view taken by the Hon'ble Supreme Court in ***Asfaq v. State of Rajasthan, (2017) 15 SCC 55***; the fact that personal freedom is a priceless fundamental right which should only be restricted when necessary in light of the unique facts and circumstances of the case and as the petitioner has undergone approximately 12 years of imprisonment, therefore, this Court is of the view that petitioner is entitled to be released on furlough. Accordingly, the petition is allowed and petitioner is granted furlough for a period of two (02) weeks on following conditions:

- (i) The Petitioner shall furnish personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the concerned Jail Superintendent.



(ii) The petitioner shall provide his mobile phone number to the concerned Jail Superintendent and SHO concerned at the time of release, which shall be kept in working condition at all times;

(iii) The petitioner shall not leave India without the prior permission of this Court and shall reside at the address as per prison records;

(iv) The petitioner shall positively surrender before the concerned Jail Superintendent on the expiry of the period of two weeks from the date of his release.

7. Therefore, the present petition is disposed of accordingly.

8. A copy of this order be sent forthwith to concerned Jail Superintendent through electronic mode.

RAJNISH BHATNAGAR, J

NOVEMBER 23, 2023

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