

(2019) 01 DEL CK 0378

In the Delhi High Court

Case No : Criminal Writ Petition No. 2828 Of 2018

Deepender Kumar @ Chotu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-01-2019

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 32A, 37
Delhi Prison Rules, 2018 — Rule 1224

Citation : (2019) 1 JCC 644

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Saurabh Kumar, Pramod Kumar Dubey, Rajesh Mahajan, Purnima Malik

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By this petition, the petitioner seeks furlough and also challenges the communication dated 21st August, 2018 whereby his request for release on furlough was declined.

2. The communication declining furlough of the Competent Authority reads as under: -

This is in reference to the captioned subject. In this regard, it is to inform you that Competent Authority has declined the application for grant of 1st Spell of furlough to the convict Deepender Kumar @ Chotu S/o Sh. Narsi Ram as the said convict is undergoing sentence in case under NDPS Act. The convicts under NDPS Act are not entitled for remissions as per Section 32A of NDPS Act, whereas furlough is a kind of remission granted to convicts. The convict Deepender Kumar @ Chotu S/o Sh. Narsi Ram has not earned any AGCR as required under para 26.1 of Parole/Furlough guidelines 2010 which states as under: -

26.1 "Good conduct in the Prison and should have earned

Three Annual Good Conduct Remission and continues to maintain good conduct."

3. After the parole/furlough guidelines 2010, the Delhi Prison Rules 2018 have come into force which are in force w.e.f. 1st January, 2019, Rule 1224 thereof dealing with furlough provides as under:-

"1224. The following categories of prisoners shall not be eligible for release on furlough:

- i. Prisoners convicted under sedition, terrorist activities and NDPS Act.
- ii. Prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate of his home district or there exists any other reasonable ground such as a pending investigation in a case involving serious crime.
- iii. Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak of riot, mutiny or escape, or rearrested who absconded while released on parole or furlough or who have been found to be instigating serious violation of prison discipline as per the reports in his/her annual good conduct report.
- iv. Convicted foreigners.
- v. Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered.

Note: - (1) Simultaneous furlough to co-accused convicts are ordinarily not permissible. However, when co-accused convicts are family members, simultaneous release may be considered in exceptional circumstances only.

Note: - (2) If an appeal of a convict is pending before the High Court or the period for filing an appeal before the High Court has not expired, furlough will not be granted and it would be open to the convict to seek appropriate directions from the Court."

4. From perusal of the rule of 1224 it is evident that the prisoners who has been convicted for sedition, terrorist activities and under NDPS Act will not be entitled to furlough.

5. Learned counsel for the petitioner states that the petitioner was earlier also granted furlough. A perusal of the nominal roll reveals that though this Court granted furlough to the petitioner, however the parole/furlough guidelines of the Government were not brought to its notice and thus not considered.

6. In 2000 (8) SCC 437 Dadu @ Tulsidas Vs. State of Maharashtra the Supreme Court while dealing with Section 32A of the NDPS Act held it ultra vires only to the extent it takes away the right of the Court to suspend the sentence or grant parole in a given case upholding it to the extent Section 32A takes away the power of the executive to remit or commute the sentence. Supreme Court also noting the distinction between parole and bail held that parole is not a

suspension of the sentence, the convict continues to serve the sentence despite grant of parole under the statute or rules and is released temporarily for a specific purpose. It was held:

"29. Under the circumstances the writ petitions are disposed of by holding that:

- i) Section 32-A does not in any way affect the powers of the authorities to grant parole.
- ii) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.
- iii) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this judgment."

7. Considering the fact that prisoners who have been convicted for offences punishable under the NDPS Act are not entitled to furlough which is a kind of remission granted as a reward for good conduct unlike parole which can be granted in exigencies of situation as well, this Court finds no ground to grant furlough to the petitioner.

8. Petition is dismissed.

9. Copy of this order be communicated to the petitioner through Superintendent, Tihar Jail.