

Satender Alias Gajender vs State (Govt. Of Nct Of Delhi) on 9 May, 2022

Author: Anoop Kumar Mendiratta

Bench: Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (CRL) 221/2022

SATENDER ALIAS GAJENDER

Through: Mr. Akshay Bhandari, Advocate
versus

STATE (GOVT. OF NCT OF DELHI)

Through: Ms. Nandita Rao, ASC for the
with Mr. Amit Peswani, Ad
along with SI Pankaj Kuma

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA
ORDER

% 09.05.2022

1. This is a writ petition under Article 226 of the Constitution of India read with Section 482 Cr. PC praying for setting aside the impugned order dated 29.12.2021 passed by the respondent vide which the application for furlough of the petitioner was rejected in FIR No. 344/1998, Police Station Bhajan Pura under Sections 302/120-B IPC.

2. As per the case of the petitioner, he has been convicted in the aforesaid FIR and has been sentenced to life imprisonment. The Crl. Appeal No. 525/2021 filed by the petitioner against the judgment and sentence imposed by the learned Trial Court has been further dismissed by this Court. The petitioner is stated to have undergone over 11 years in custody including remission. Further, the petitioner applied for furlough, which has been rejected vide order dated 29.12.2021 on the following grounds:

"In this regard, I am directed to inform you that the competent authority has considered the application for grant of furlough and same has been declined in view of possibility of his jumping furlough, as he jumped interim bail in 2003 and re-

arrested in 2015. Also Police authority has strongly opposed for grant of parole/furlough."

3. Learned counsel for the petitioner contends that the petitioner has maintained good conduct in the past 3 years as required under Rule 1223 and has been wrongly denied furlough. It is further submitted that petitioner cannot be perennially denied the benefit of furlough, merely on the ground

that he had jumped interim bail in 2003 and was rearrested in 2015.

Reliance is further placed upon Saurabh Sharma Vs. State of NCT of Delhi in W.P. (Crl.) No.828/2020, decided on 08.06.2020, Ms Kiran Vs. State in W.P. (Crl.) No.74/2019 decided on 14.01.2019 and Sudhir vs. State W.P. (Crl.) No.796/2020 decided on 04.06.2020 by High Court of Delhi.

4. The petition has been opposed by the learned ASC for the State and reference is made to Rule 1224 of Delhi Prison Rules, 2018. It is submitted that the 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 are not eligible for release on furlough.

5. I have given considered thought to the contentions raised. A query has been raised to learned ASC for the State that whether the restraint in Rule 1224 for releasing on parole or furlough continues perennially or the same is subject to Rule 1223 which provides that in order to be eligible to obtain furlough, the prisoner must fulfil the following criteria:

I. Conduct in the prison and should have earned rewards in last 3 annual good conduct reports and continues to maintain good conduct.

II. The prisoner should not be a habitual offender. III The prisoner should be a citizen of India. Learned ASC for the State has not been able to point out any rule whereby the furlough may have been denied perennially in case the petitioner had jumped parole or furlough, despite earning of last three annual good conduct reports.

6. It may also be noticed that in Sudhir vs. State (supra), the parole was opposed on the ground that the petitioner had jumped bail twice but was subsequently arrested. However, considering the fact that petitioner had already undergone incarceration of 15 years including remission and had earned certificate of good conduct, he was granted parole for 3 weeks.

7. The need for a balance to be maintained between two competing interests while granting parole or furlough, of reforming the convict on one hand and the public purpose and the interests of society on the other has been noticed by Supreme Court in Asfaq v. State of Rajasthan, (2017) 15 SCC 55. The relevant paras may be beneficially reproduced:

"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 behaviour shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments."

8. The petitioner in the present case has not availed the benefit of furlough for the last 7 years since 27.02.2015 and has undergone sentence including remission for more than 12 years. The conduct of the petitioner is satisfactory except that he jumped bail and was rearrested on 27.02.2015. Considering the facts and circumstances, I deem it expedient to release the petitioner on furlough. The impugned order dated 29.12.2021 passed by the Office of Director General of Prisons is accordingly set aside. The petitioner is granted furlough for a period of three weeks from date of his release on furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of concerned Jail Superintendent and subject to the following conditions:

- i. The petitioner shall provide his and the surety's mobile number to the Investigating Officer which shall be kept active during this period;
- ii. The petitioner shall also report to the SHO, Police Station Vrindavan, Mathura, Uttar Pradesh on every Monday. In case, SHO is not available, he shall mark his presence before the duty officer;
- iii. The petitioner shall not indulge in any criminal activity or any illegal activities during the aforesaid period; and iv. The petitioner shall surrender before the concerned Superintendent Jail on the expiry of the period of three weeks of his release.

Petition is accordingly disposed of in the above terms. A copy of the order be forwarded to the SHO Police Station Vrindavan, Mathura, Uttar Pradesh as well as Jail Superintendent for necessary action.

ANOOP KUMAR MENDIRATTA, J MAY 9, 2022/A