Atbir vs State Of Nct Of Delhi on 29 April, 2022

Author: Dinesh Maheshwari

Bench: Aniruddha Bose, Dinesh Maheshwari

REPORTA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 714 OF 2022
(ARISING OUT OF SLP(CRL.) NO. 7887 OF 2021)

ATBIR .....APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI .....RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

2. The appellant, serving the sentence of imprisonment for whole of his natural life after commuting of death sentence by the Hon'ble President of India, has preferred this appeal on being aggrieved by the order dated 02.08.2021, as passed by the learned Single Judge of the High Court of Delhi at New Delhi in W.P. (Crl.) No. 3345 of 2019 dismissing his writ petition against the order dated 21.10.2019, as issued by the Director General of Prisons, Prison Headquarters, Tihar, Janakpuri, New Delhi declining his prayer to grant furlough.

2.1. The prayer of the appellant for grant of furlough has been declined by the orders aforesaid essentially with reference to the conditions of the order dated 15.11.2012 issued by the Hon'ble President of India on a mercy petition whereby, even while modifying the sentence of death as awarded to the appellant to the one of imprisonment for life, it was provided that the appellant would remain in prison 'for the whole of the remainder of his natural life without parole and there shall be no remission of the term of imprisonment'.

2.2. The contention on behalf of the appellant essentially is to the effect that the aforesaid terms of the order dated 15.11.2012 are of no debarment, so far as his entitlement to furlough under the Delhi Prison Rules, 20181 is concerned.

3. With reference to the foregoing broad outline of the present case, the relevant background aspects could be briefly noticed as follows:

> 3.1. The appellant was charged of the offence under Section 302 of the Indian Penal Code, 1860 in the criminal case arising out of FIR No. 24 of 1996 dated 08.02.1996, registered at Police Station Mukherjee Nagar, Delhi on the accusation that he caused the death of his step-mother, step-

brother and step-sister by multiple knife-blows. After trial, the Court of Additional Sessions Judge, Delhi convicted the appellant of the offence aforesaid by the judgment dated 10.09.2004 and awarded the sentence of death to him by the order dated 27.09.2004. The reference for confirmation of death sentence as also the criminal appeal filed by the appellant against his conviction and sentence were decided together by the High Court of Delhi by its judgment dated 13.01.2006. The appeal 1 Hereinafter also referred to as 'the Rules of 2018'. was dismissed and the death sentence was confirmed. Further to that, Criminal Appeal Nos. 870 of 2006 and 877 of 2006, as filed by the appellant and co-accused, were considered and decided by this Court on 09.08.2010. After examining the material placed on record and on analysis of the relevant facts and circumstances, this Court confirmed the conviction of the appellant and, finding it to be a case falling in 'rarest of the rare category', confirmed the sentence of death awarded to him, while also confirming the conviction and sentence of life imprisonment awarded to the co-accused. This Court, inter alia, observed and held as under: -

> "48. Though the accused Atbir was also at the age of 25 at the relevant point of time, considering his hunger and lust for property, killing his own family members when they had no occasion to provoke or resist and causing 37 knife-blows on vital parts of all the three persons, we conclude that it is a gravest case of extreme culpability and the rarest of the rare case and death sentence alone would be proper and adequate.
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> 49. We have already noted that the accused had no justifiable ground for his action. We are also satisfied that the victims were helpless and undefended. Taking into consideration all the facts and materials, it is crystal clear that the entire act of Atbir amounts to barbaric and inhuman behaviour of the highest order. The manner in which the murder was carried out in the present case is extremely brutal, gruesome, diabolical and revolting as to shock the collective conscience of the community.
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> 50. In the light of the above discussion, we confirm the conviction and sentence of death imposed on Atbir and the same shall be executed in accordance with law. We also confirm the conviction and sentence of life imprisonment imposed on Ashok."
> 3.2. It appears from the material placed on record that on 02.03.2011, the review petition filed by the appellant bearing No. 518 of 2010 was dismissed by this Court and, on 14.05.2011, the curative petition filed by him was also dismissed. Thereafter, the appellant filed a petition under Article 72 of the Constitution of India invoking the powers of the Hon'ble President of India to grant pardon and to suspend, remit or commute the sentence.

> 3.3. By the order dated 15.11.2012, the Hon'ble President of India was pleased to accept the recommendations of the Ministry of Home Affairs to modify the sentence of death awarded to the appellant and, accordingly, the sentence of death was modified to the one of imprisonment for life with the requirements that he would remain in prison for the whole of remainder of his natural life without parole and there shall be no remission of the term of imprisonment. The relevant contents of the order dated 15.11.2012 (Annexure P-3) read as under: -
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> "1. I have perused the mercy petition under Article 72 of the Constitution submitted by the condemned prisoner, Atbir S/o Sir Jaswant Singh and have also studied the judgment of Hon'ble Supreme Court and comments and recommendations of the Ministry of Home Affairs.
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> 2. After considering all the facts of the case, I agree with the recommendations made by the Home Minister to modify sentence of death of the condemned prison, Atbir S/o Shri Jaswant Singh, to one of the life imprisonment. However, the prisoner shall remain in prison for the whole of the remainder of his natural life without parole and there shall be no remission of the term of imprisonment."
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> 4. In view of the aforesaid background aspects, the appellant is to serve the sentence of imprisonment for the whole of his natural life without parole and without any remission in the term of imprisonment.

Accordingly, the appellant is serving the sentence of imprisonment. However, he made an application for grant of furlough in terms of the Delhi Prison Rules, 2018.

4.1. The prayer so made by the appellant for grant of furlough was rejected by the Director General of Prisons by the order dated 21.10.2019 (Annexure P-4). The relevant contents of this order dated 21.10.2019, which is under challenge by the appellant, read as under: -

> "Sub: Regarding application for grant of Furlough to Atbir s/o Sh. Jaswant Singh in case FIR No. 24/1996, u/s 302/34 IPC, P.S.-Mukherjee Nagar, Delhi Ref: Computer diary No. 3574359.
>
> This is in reference to the application for grant of furlough to convict Atbir s/o Sh. Jaswant Singh.
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> 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 declared at this stage for the following reason(s): -
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> 1. Hon'ble President of India has passed an order dated 17.01.13 whereby his Death sentence commuted to Life Sentence with the condition to remain in custody till reminder of natural life without parole and without remission.

> 2. As per Para 1223(I) of Delhi Prison Rules 2018-Good conduct in the prison and should have earned rewards in last 3 Annual Good Conduct Report and continues to maintain good conduct. Hence, prisoner is not fulfilling criteria referred in Para 1223(I) of Delhi Prison Rules 2018 as the convict has not earned last three Annual Good Conduct Report.

The convict may be informed under proper acknowledgement."

5. Being aggrieved by the aforesaid order dated 21.10.2019, the appellant preferred a writ petition before the High Court. The High Court took note of the background aspects and then, with reference to its order dated 03.07.2020 in W.P. (Crl.) No. 682 of 2019: Chandra Kant Jha v. State of NCT of Delhi, found that the appellant was not entitled to seek furlough because he was not entitled to remission of any kind. The whole of the reasoning in the short order passed by the High Court in relation to the case of the petitioner as contained in paragraph 3 of the order impugned reads as under: -

> "3. Since the petitioner is not entitled to any remission of any kind, the petitioner's claim to seek furlough is not made out in view of the decision of this Court in W.P. (Crl.) 682/2019 titled as 'Chandra Kant Jha vs. State of NCT of Delhi' dated 3rd July, 2020."

6. Seeking to question the aforesaid orders passed by the Director General of Prisons and by the High Court, and while asserting the appellant's right to be granted furlough, the learned counsel Ms. Neha Kapoor has emphatically argued that the authority concerned and the High Court have viewed the case from an altogether wrong angle and have declined the prayer of the appellant on a misconstruction of the order passed by the Hon'ble President of India as also the relevant provisions in the Rules of 2018. Learned counsel would submit that the impugned orders run rather contrary to the fundamental principles governing the entitlement of prisoner to be granted furlough and more particularly, the rights available to the appellant in the Rules of 2018. 6.1. The learned counsel for the appellant has contended that furlough is an obvious consequence of a prisoner maintaining good conduct in prison; and cannot be denied to the appellant only on the ground that he has to remain in prison for whole of the remainder of his natural life, which in any case he would serve. Thus, according to the learned counsel, if the appellant is maintaining good conduct in jail and fulfils eligibility conditions as provided under Rule 1223(I) of the Rules of 2018, i.e., having his last 3 Annual good conduct reports, he is entitled to grant of furlough and the same cannot be denied.

6.2. The learned counsel would also submit that the expression "Annual good conduct report" occurring in Rule 1223(I) of the Rules of 2018 has been wrongly equated by the authorities and by the High Court with the expression "Annual good conduct remission". Learned counsel would submit that the appellant has last 3 Annual good conduct reports in his favour and thus, fulfils the basic requirement for grant of furlough. Learned counsel would further submit that even if the Hon'ble President of India has curtailed remission, which could have been granted in exercise of powers under Article 72 of the Constitution of India; or for that matter, even if the concession of premature release under Section 432 of the Code of Criminal Procedure, 19732 may not be available,

that would not curtail the power of the jail authorities - Director General of Prisons in the present case - under the Rules of 2018 to grant furlough to the appellant.

6.3. Learned counsel would further submit that the appellant is languishing in jail for about 26 years. The remissions which ought to have been granted for maintaining good conduct and for the work undertaken by him, even when added to his sentence, may not have any impact unless the sentence is remitted/commuted by the competent authority. But that does not lead to the corollary that the appellant ceases to earn remission altogether; and whether he gets advantage of release 2 Hereinafter referred to as 'CrPC'.

because of such remission or not is a matter different and is not decisive of the question of furlough. The submission has been that eligibility for grant of remission is not relevant for the purpose of considering the case of a prisoner for grant of furlough.

6.4. Learned counsel has argued that taking away the right of the appellant to be granted furlough runs contrary to the reformative approach and extension of incentives. This apart, according to learned counsel, the most important right of a prisoner is to the integrity of his physical person and mental personality; and no prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the term of sentence.

6.5. Learned counsel for the appellant has also referred to the decision of Delhi High Court in Chandra Kant Jha (supra) and has submitted that reliance therein to the decision of the Constitution Bench of this Court in the case of Union of India v. V. Sriharan & Ors.: (2016) 7 SCC 1 has been rather misplaced because the enunciations by this Court that "when a remission of the substantive sentence is granted under Section 432, then and then only giving credit to the earned remission can take place and not otherwise" cannot mean that furlough could be availed by the appellant only if his case is considered for premature release. It is submitted that furlough is a facility available only during the period of custody and the co-relation, as assumed by the High Court, with remission in the manner that furlough would be available only if remission is available, is not correct.

6.6. Learned counsel has also placed before us the copies of certificates said to have been issued to the appellant towards recognition, good conduct, earned qualifications and even appreciation for fight against COVID-19.

7. The Additional Solicitor General Mr. S. V. Raju, appearing for the respondent, has referred to the definition of furlough in Section 2(h) of Delhi Prison Act, 2000 and Rule 1199 of the Delhi Prison Rules, 2018; and has also referred to the principles underlying grant of furlough, as explained by this Court in the case of Asfaq v. State of Rajasthan & Ors.: (2017) 15 SCC 55.

7.1. The learned ASG would submit that in a comprehensive consideration of the applicable provisions of law and the enunciations by this Court, furlough is that of reduction in sentence of prisoner which amounts to remission of sentence and this reduction is simply not permissible in this case, in view of the order dated 15.11.2012 of the Hon'ble President of India. The period of furlough

is deducted from the sentence unless the convict commits an offence while on furlough, per Rule 1222 of the Rules of 2018; and such deduction being not permissible, the appellant would not be entitled to be granted furlough. 7.2. With reference to Rule 1223 of the Rules of 2018, the learned ASG has submitted that furlough could be granted only when the appellant has good conduct in prison and has earned rewards in the last 3 Annual good conduct reports and continues to maintain good conduct. There being no entitlement of Annual good conduct remission under Rule 1178 of the Rules of 2018, the appellant may not be admitted to furlough. 7.3. The learned ASG has also referred to the observations of this Court in State of Gujarat & Anr. v. Narayan: (2021) SCCOnLine SC 949 and has submitted that a prisoner like appellant has no absolute legal right to claim furlough; and in the present case, where good conduct remission is not available, furlough would not be available to the appellant. However, and even while maintaining the stance of respondent, the learned ASG, in all fairness, has not joined issue on the principles underlying the concept of furlough, as envisaged by the Rules of 2018 and as explained by this Court.

8. We have given anxious consideration to the rival submissions and have examined the record of the case with reference to the law applicable.

9. While dealing with the issue raised in this matter, i.e., as to whether the appellant is entitled to furlough under the Delhi Prison Rules, 2018 despite bar over any remission in the term of imprisonment for the whole of his natural life, it is necessary, in the first place, to take note of the relevant applicable provisions.

9.1. Furlough is defined in Section 2(h) of the Delhi Prison Act, 2000 thus: -

> "Furlough means leave as a reward granted to a convicted prisoner who has been sentenced to RI for 5 years or more and has undergone 3 years thereof" 9.2. Chapter XIX of the Delhi Prison Rules, 2018 deals with the matters concerning parole and furlough. The objectives of parole and furlough are set forth in Rules 1197 to 1200 thereof and the same may be usefully reproduced as under: -
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> "1197. Parole and Furlough to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life. The release of prisoner on furlough motivates him to maintain good conduct and remain disciplined in the prison. 1198. Parole means temporary release of a prisoner for short period so that he may maintain social relations with his family and the community in order to fulfill his familial and social obligations and responsibilities. It is an opportunity for a prisoner to maintain regular contact with outside world so that he may keep himself updated with the latest developments in the society. It is however clarified that the period spent by a prisoner outside the prison while on parole in no way is a concession so far as his sentence is concern. The prisoner has to spend extra time in prison for the period spent by him outside the Jail on parole.

1199. Furlough means release of a prisoner for a short period of time after a gap of certain qualified numbers of years of incarceration by way of motivation for maintaining good conduct and to remain disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence.

1200. The objectives of releasing a prisoner on parole and furlough are:

i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters, ii. To enable him to maintain and develop his self-confidence, iii. To enable him to develop constructive hope and active interest in life, dd iv. To help him remain in touch with the developments in the outside world, v. To help him remain physiologically and psychologically healthy, vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and vii. To motivate him to maintain good conduct and discipline in the prison" (emphasis supplied) 9.3. The specific subject of furlough is further dealt with in Rules 1220 to 1225 of the said Rules of 2018, which could also be usefully reproduced as under: -

"1220. A prisoner who is sentenced to 5 years or more of rigorous imprisonment and has undergone 3 years imprisonment after conviction with unblemished record become eligible for grant of furlough.

1221. A prisoner, as described above, may be granted 7 weeks of furlough in three spells in a conviction year with maximum of 03 weeks in one spell.

Note: -Every eligible convict may be granted one spell of furlough in the month of his birthday, subject to fulfillment of the other conditions, without any application for furlough moved by the convict. If the prisoner does not want to avail this furlough then written undertaking may be taken from him in this regard. 1222. If the prisoner commits an offence during the period, he is released on Furlough then the period will not be counted as sentence undergone.

1223. In order to be eligible to obtain furlough, the prisoner must fulfill the following criteria: -

I. Good conduct in the prison and should have earned rewards in last 3 Annual good conduct report and continues to maintain good conduct.

II. The prisoner should not be a habitual offender. III. The prisoner should be a citizen of India. 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.

1225. That the prisoners convicted of murder after rape, under POCSO Act, convicted for multiple murders whether in single case or several cases, Dacoity with murder and murder after kidnapping for ransom, may be considered by the competent authority on the following parameters: -

(i) Deputy Inspector General (Range) of prisons shall put specific recommendation for considering the said case.

(ii) Social Welfare/ Probation officer's report/ recommendation shall be considered while deciding such furlough application.

(iii) Subject to the conditions/rules mentioned in Rule 1221 to Rule 1223 above, the spell of furlough for such category would be as follows:

(a). only one spell of 3 weeks in first year of eligibility.

(b). only two spells of furlough, one for 3 weeks and other for 2 weeks in the second convict year of eligibility.

(c). Three spells of furlough like all other convicts in the subsequent years." (emphasis supplied)

10. The principles relating to different provisions dealing with the matter of release of a prisoner by way of bail, furlough and parole have been considered and the distinction has been explained by this Court in several of its decisions. We need not multiply on the authorities but, relevant it would be to take note of the observations and enunciations by this Court in the case of Asfaq (supra), where it was observed, inter alia, as under: -

> "11. There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies... *** *** ***
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> 14. Furlough, on the other hand, is a brief release from the prison.

It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.

15. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

16. This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:

> (i) Both parole and furlough are conditional release.
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> (ii) Parole can be granted in case of short-term imprisonment whereas in furlough it is granted in case of long-term imprisonment.
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> (iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society.

(See State of Maharashtra v. Suresh Pandurang Darvakar and State of Haryana v. Mohinder Singh)" (emphasis supplied) 10.1. Further, in the case of Narayan (supra), this Court has summarised the principles in the following terms: -

"24. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. The principles are thus:

(i) Furlough and parole envisage a short-term temporary release from custody;

(ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;

(iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;

(iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough;

(v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners." (emphasis supplied)

11. Having examined the matter in its totality, we find it difficult to agree with the reasoning in the order impugned and with the contentions that once it has been provided by the Hon'ble President of India that the appellant would remain in prison for whole of the reminder of his natural life without parole and without remission in the term of imprisonment, all his other rights, particularly those emanating from good jail conduct, as available in the Rules of 2018 stand foreclosed.

12. As has rightly been pointed out, in the Rules of 2018, the eligibility requirement to obtain furlough is of '3 Annual good conduct reports' and not '3 Annual good conduct remissions'. The expressions employed in Clause (I) of Rule 1223 of the Rules of 2018 are that the prisoner ought to maintain 'Good conduct in the prison and should have earned rewards in last 3 Annual good conduct report' and further that he should continue 'to maintain good conduct'. Even these expressions cannot be read to mean that the prisoner ought to earn 'good conduct remissions'. In the scheme of the Rules of 2018 it cannot be said that earning rewards is equivalent to earning remissions.

12.1. It has also rightly been pointed out that when furlough is an incentive towards good jail conduct, even if the person is otherwise not to get any remission and has to remain in prison for whole of the reminder of his natural life, that does not, as a corollary, means that his right to seek furlough is foreclosed. Even if he would spend some time on furlough, that will not come to his aid so as to seek remission because of the fact that he has to remain in prison for whole of the reminder of his natural life.

13. We may examine the matter from yet another angle and perspective. The presidential order dated 15.11.2012 bars parole as also remission but significantly, there is no mention of the treatment of entitlement towards furlough. Noteworthy it is that parole is akin to temporary suspension of execution of sentence. There cannot be any temporary suspension of execution of sentence qua the appellant inasmuch as the sentence awarded to him has to run in perpetuity and during the whole of his natural life. Moreover, for parole, conduct is not a decisive factor. In fact, some cause or event predominantly decides the question whether the person is to be admitted to parole or not? When the appellant is to undergo the sentence for whole of his natural life, any cause or event may not give him any right to claim parole. 13.1. However, in contradistinction to parole, in furlough, the prisoner is deemed to be serving the sentence inasmuch as the period of furlough is not reduced from actual serving period. And, the conduct is predominantly decisive of entitlement towards furlough. Thus, even if the appellant would be on furlough, he would be deemed to be serving the sentence for all time to come.

14. When we revert to the reasoning and logic of the High Court in the case of Chandra Kant Jha (supra), it appears that the High Court proceeded on the assumption that the matter was being considered for grant of remission and 'consequently' for grant of furlough under the Delhi Prison Rules, 2018. In paragraph 4 of the aforesaid judgment, the issue for consideration had been formulated thus: -

> "4. The issue which thus arises for consideration in the two petitions is whether a convict who has been awarded sentence for imprisonment for life with the stipulation that no remission would be granted for a particular period or for the remainder of the life is entitled to furlough during the said period while undergoing the sentence."
> 14.1. The High Court further proceeded to examine the Rules of 2018 with the observations that the Court was 'considering the grant of remission and consequently grant of furlough'3. With this approach, the Court proceeded to examine Rules 1170 to 1175 of the Rules of 2018 dealing with the matters for remission. The reasoning of

the Court could be specifically noticed in paragraphs 11 and 12 of the judgment in the case of Chandra Kant Jha (supra) which read as under: -

"11. The note appended to Rule 1171 of the Delhi Prison Rules, 2018 clarifies that if any statute or the court in its order of sentence has denied the remission to the prisoner and thereby not specified the kind of remission to be denied then all kinds of remission will be denied. Therefore, unless the sentencing Court while stipulating the condition of no remission specifies debarment of any particular kind of remission, all kinds of remissions shall be barred to a prisoner. Consequently, as the sentences awarded to the petitioners bar consideration for remission for fixed number of years in the case of Sanjay Kumar Valmiki and for the remainder life in case of Chandra Kant Jha, the petitioners cannot be said to be eligible for grant of remission and consequently furlough.

12. As laid by the Supreme Court in its various decisions parole is an exercise of discretion whereas furlough is a salutary right of the convict to be considered for release which the convict can claim if he satisfies the requirement of the Act and the Rules. Parole is granted to meet certain emergencies whereas furlough accrues to the petitioner on compliance of the conditions prescribed. From Rules 1171 to 1178 and Rule 1223 of the Delhi Prison Rules, 2018 it is evident that a prisoner is entitled to furlough only if he has 3 Vide paragraph 9 of the judgement in Chandra Kant Jha (supra) earned three Annual Good Conduct reports and consequently three Annual Good Conduct Remission. Where the sentence of the convict bars grant of remission, the pre-requisite of attaining three Annual Good Conduct Remission is not satisfied and hence the threshold required to qualify for grant of furlough is not met.

Hence a prisoner who is not entitled to any remission for a particular period or as in the case of Chandra Kant Jha for the remainder of his life, would not be entitled to furlough as he does not qualify for the threshold requirement." 14.2. In our view, in the case of Chandra Kant Jha (supra), the High Court essentially formulated the question in converse and that has resulted in its conclusion against grant of furlough. The Court was of the view that since the convict in question would not get remission, he would not be entitled to furlough. The Court assumed that remission was a pre- requisite for furlough. In our view, the entitlement of furlough cannot be decided in the case of the present nature with reference to the question as to whether any remission would be available or not. Even if the appellant would get furlough (of course, on fulfilment of other conditions) that would not result into any remission because whatever be the remission, he has to spend the whole of the life in prison. But that does not debar him from furlough if he is of good jail conduct and fulfils other eligibility requirements.

14.3. On a close look at the decision in the case of Chandra Kant Jha (supra), it appears that the observations of this Court in the case of Asfaq (supra) to the effect that 'Furlough is granted as a good conduct remission' were taken by the High Court as decisive of the matter and leading to the conclusion that furlough is available only if remission is available. With respect, we are unable to agree with this line of reasoning of the High Court. Those observations of this Court in paragraph 14

on the decision in Asfaq (supra) cannot be read in isolation and cannot be read to mean that getting remission is a pre-requisite for obtaining furlough. The whole of the scheme of granting furlough is based on the approach of reformation and as incentive for maintaining good conduct. 14.4. Furthermore, reference to the Constitution Bench decision in V. Sriharan (supra) by the High Court as regards the types of remission and the operation of Section 432 CrPC, again, has no application to the question of grant of furlough in the present case.

14.5. Viewed from any angle, we are satisfied that the logic and reasoning of the High Court in the case of Chandra Kant Jha (supra), which has been followed in the order impugned, cannot be approved.

15. In other words, even if the appellant is to remain in prison for the whole of remainder of his life, the expectations from him of good conduct in jail would always remain; and the lawful consequences of good conduct, including that of furlough, cannot be denied, particularly when the same has not been prohibited in the order dated 15.11.2012. We need not elaborate to say that depriving of even the concession of furlough and thereby taking away an incentive/motivation for good conduct would not only be counter-productive but would be an antithesis to the reformative approach otherwise running through the scheme of Rules of 2018.

16. We may also observe that in the impugned order passed by the Director General of Prisons, it has been stated in paragraph 2 that the appellant had not earned the last 3 Annual good conduct reports. Such observations, prima facie, appear to be of mixing up the 'Annual good conduct report' with 'Annual good conduct remissions'. Be that as it may, we would leave all other aspects of entitlement of the appellant to furlough open for consideration of the authorities concerned. However, the appellant cannot be denied furlough with reference to the order dated 15.11.2012. The said order cannot be construed to take away the requirements on the appellant to maintain good conduct; and to take away the rights, if flowing from his maintaining good conduct.

17. Thus, looking to the concept of furlough and the reasons for extending this concession to a prisoner lead us to hold that even if a prisoner like the appellant is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, neither the requirements of his maintaining good conduct are whittled down nor the reformative approach and incentive for good conduct cease to exist in his relation. Thus, if he maintains good conduct, furlough cannot be denied as a matter of course.

17.1. We would hasten to observe that whether furlough is to be granted in a given case or not is a matter entirely different. Taking the case of the appellant, he is a person convicted of multiple murders. Therefore, the requirement of Rule 1225 of the Rules of 2018 may come into operation. However, it cannot be said that his case would never be considered for furlough. Whether he is to be given furlough on the parameters delineated therein or not is a matter to be examined by the authorities in accordance with law.

18. In view of the above, while disapproving blanket denial of furlough to the appellant in the orders impugned, we would leave the case of the appellant for grant of furlough open for examination by

the authorities concerned in accordance with law.

19. For what has been observed, discussed and held hereinabove, this appeal succeeds and is allowed; the impugned order dated 02.08.2021 as passed by the High Court of Delhi and the order dated 21.10.2019 as passed by the Director General of Prisons, Prison Headquarters, Tihar, Janakpuri, New Delhi are set aside; and the case of the appellant for grant of furlough is restored for reconsideration of the said Director General of Prisons. For that matter, a fresh report may be requisitioned from the jail authorities and the matter may be proceeded in accordance with law. We would expect the Director General of Prisons to take a decision in the matter expeditiously, preferably within two months from today.

..... J.

(DINESH MAHESHWARI) ..... J.

(ANIRUDDHA BOSE) NEW DELHI;

APRIL 29, 2022.