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

+ **W.P.(CRL) 1702/2025**

SURENDER KUMAR

.....Petitioner

Through: Mr. Sarthak Maggon, Advocate

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Amol Sinha, ASC for State with
Inspector Sahi Ram, PS Vasant Vihar

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **27.05.2025**

[Physical Hearing/Hybrid Hearing (as per request)]

CRL.M.A. 16794/2025 (for grant of parole)

1. This application has been filed on behalf of petitioner in terms with liberty granted yesterday by the Division Bench of this Court in LPA 346/2025. It would be pertinent to mention that yesterday after lunch, mentioning of this matter was made by learned counsel for petitioner, informing that the Division Bench in the LPA 346/2025 had directed him to file an application on the same day (*yesterday itself*) for parole and also directed that the said application be decided on the same day. Till 05:00pm, copy of order dated 26.05.2025 of the Division Bench was not received. Thereafter, I had administrative meetings and by about 08:00pm, before leaving the Court, copy of order downloaded by the Court Master from website was placed before me. It is that application, which has now been listed for hearing. I have heard learned counsel for petitioner and learned



ASC for State.

2. At the outset, both sides submit that order dated 21.05.2025 of this bench was upheld yesterday by the Division Bench in LPA 346/2025 and the appeal was disposed of granting liberty to the petitioner (*appellant therein*) to file an application for being released on parole. The Division Bench also granted liberty to the petitioner to seek directions to the jail authorities to consider to keep him in semi-open prison or open prison. The Division Bench further directed this bench to expedite the proceedings in the writ petition and if possible, prepone the date.

3. On behalf of petitioner, it is argued by learned counsel that as a matter of equity, the petitioner deserves to be granted parole till disposal of the writ petition. Since the petitioner on furlough is scheduled to surrender today itself, it is contended by learned counsel for petitioner that in view of order passed by the Division Bench, the petitioner has exercised liberty of seeking parole. Learned counsel for petitioner contends that on ground of a stale punishment for recovery of mobile phone and SIM card from the cell where petitioner was lodged, he cannot be endlessly denied parole and furlough. Learned counsel for petitioner submits that on account of long incarceration and good conduct in prison, the petitioner is entitled to be granted parole. However, learned counsel for petitioner also submits that petitioner had retained with him in jail only one SIM card.

4. On the other hand, learned ASC strongly opposes the application, contending that the efforts of petitioner aimed at ever-greening of furlough are not justifiable. Learned ASC submits that since the order dated



21.05.2025 of this bench was upheld by the Division Bench, now even this bench would not grant extension of furlough. It is further contended by learned ASC that the only benefit granted to the petitioner by the Division Bench was liberty to file parole application. The decision on the parole application was directed to be taken today itself, but that does not mean granting the parole. Learned ASC took me through the contents of the application and argued that there is absolutely no case set up for grant of parole. In the present application, the petitioner has also sought directions to be shifted to an open jail, so learned ASC submits that since the petitioner never challenged order whereby he was shifted from an open jail back to a closed jail, now he cannot be granted that relief through this application.

5. It would be apposite to note that the present application is predominantly a copy-paste of certain portions of the appeal, which appeal was disposed of by the Division Bench yesterday. It seems that while drafting the application, not even slightest of care was taken and the expressions like “*the learned single judge failed to appreciate*” were pasted in the application. Be that as it may, the application must be adjudicated on the basis of its content not the expressions.

6. There is no dispute that the parole application has to be formally filed before the competent authority. Once there is a procedure established by law, that must be adhered to except in exceptional circumstances. But in the present case, admittedly, no such application has been filed before the competent authority. At the same time, no exceptional circumstances have been disclosed by the petitioner which would justify him to bypass the competent authority and take a diversion from the procedure established by



law.

7. Going a step deeper, it would also be apposite to notice the grounds on which parole has been sought in the present application and the same are extracted below:

“4. That the Learned Single Judge failed to appreciate that the Petitioner shares an estranged relationship with his parents and children, namely Mr. Devesh Tokas and Ms. Muskan, and that his only source of emotional and domestic support is his physically handicapped brother, who is suffering from Spinocerebellar Ataxia, and his sister. The sister, although supportive, is unable to overtly express the same due to undue influence and pressure exerted by the Petitioner’s father, who harbours deeprooted animosity against the Petitioner.

5. That the said hostility stems from the Petitioner’s conviction, which the father believes has brought disrepute to the family. It is pertinent to mention that repeated altercations occurred between the Petitioner and his father during a previous period of bail, when the Petitioner confronted him in defence of his mother due to her domestic abuse and his extramarital affairs.

6. That the Petitioner’s brother’s wife, Ms. Priya Tokas, has filed multiple police complaints against the Petitioner’s son, Mr. Devesh Tokas, detailing instances of grave misconduct and violent behaviour, thereby rendering the home environment unsafe and volatile for the Petitioner’s brother and his family.

7. That the impugned order causes serious prejudice to the Petitioner, as it would leave his dependent brother and his family in a vulnerable position, especially when the Petitioner is the only responsible male figure currently supporting them. The brother’s children, including a nephew who has just completed Class 12 and a niece in a crucial academic year, also require guidance and stability.

8. That the Petitioner’s residential premises comprise three floors: the ground floor is occupied by his parents and children; the first floor is occupied by his brother and his family. Due to the support extended by the brother’s family to the Petitioner, interpersonal relationships within the family have further deteriorated, reinforcing the pressing need for the Petitioner’s presence to shield his brother’s family from retaliatory actions by others”.

8. Further, in para 9 of the application, the petitioner pleaded:

“9. That the Learned Single Judge failed to call for a status report or to direct any verification of the grave familial and medical circumstances



presented by the Petitioner. Had such verification been conducted, the true nature of the hardship faced by the Petitioner and his brother's family would have been revealed".

9. It is the petitioner himself who sought relief before the Division Bench that his parole application be decided today itself. That being so, there is no scope for this Court to adjourn the matter and call for status report.

10. The circumstances enumerated in the above extract, on which the petitioner seeks to be released on parole are certainly not of the nature which call for an urgency of the extent that he be allowed to abrogate the procedure established by law and bypass the competent authority. The competent authority, armed with technical support system is a creature of law. The scope of judicial review cannot be taken to the extent of this Court stepping into the shoes of the competent authority.

11. There is yet another aspect. By way of order dated 01.10.2024, passed in SLP 1484/2024 filed on behalf of the present petitioner, the Hon'ble Supreme Court took a view that the petitioners ought to have surrendered before 02.02.2024, but since that was not done, interim order passed by the Hon'ble Supreme Court was vacated. Thereafter, the petitioner surrendered and applied for furlough, which was declined by the competent authority, so the petitioner came to this Court and through order dated 26.03.2025 in W.P. (CRL) 225/2025, the coordinate bench of this Court granted the relief of furlough for three weeks, specifically directing that immediately upon expiry of furlough, the petitioner shall surrender. Thereafter petitioner filed an application seeking exemption from surrender, which application was dismissed by this bench vide order dated 21.05.2025,



which order was upheld by the Division Bench and now, petitioner seeks parole, which practically is in the form of exemption from surrendering. This lends credence to the argument of learned ASC that petitioner is trying to ever-green the temporary liberty granted to him.

12. So far as the alternate relief sought in the application, it is not denied that earlier by way of an explicit order, the petitioner was transferred back to a closed jail from an open jail. It is also not denied that petitioner has till date not challenged that order. Apart from this, even before the competent authority no such request for being transferred to an open jail has been made by the petitioner till date.

13. Considering the above circumstances, I am unable to find any merit in the present application, so the same is dismissed.

14. Consequently, it is directed that the petitioner shall surrender before the concerned Jail Superintendent today itself, failing which consequences in accordance with law shall follow.

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15. Despite heavy board of this Court, in compliance with the directions of the Division Bench, hearing of this petition is preponed from 20.08.2025 to 02.08.2025. It is made clear that the hearing has been fixed on a Saturday with consent of both sides.

GIRISH KATHPALIA, J

MAY 27, 2025/as/ry