



2026:DHC:3601-DB



2026:DHC:3601-DB

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

Reserved on: 25.03.2026
Pronounced on: 29.04.2026

+ **W.P.(CRL) 1832/2024 & CRL.M.A. 17833/2024**
SANDEEP ALIAS SANDYPetitioner
Through: Mr.Ranbir Singh Kundu,
Mr.Shubham Mavi and
Mr.Paras, Advs.

versus

STATE GOVT. OF NCT OF DELHI AND ANR.Respondents
Through: Mr.Yasir Rauf Ansari, ASC
with Mr.Alok Sharma, Adv.
and SI Sukhwinder Singh,
Crime Branch

+ **W.P.(CRL) 945/2025 & CRL.M.A. 8855/2025**
VIJAY DAHIYAPetitioner
Through: Mr. Faraz Maqbool, Panel
Counsel, DHCLSC, with Ms.
A. Sahitya Veena, Ms.
Deepshikha and Ms. Ananya
Luthra, Advs.

versus

STATE OF NCT OF DELHI & ANR.Respondents
Through: Mr. Rahul Tyagi, ASC with Mr.
Sangeet Sibou, Mr. Aniket
Kumar Singh and Mr. Priyansh
Raj Singh Senger, Advs. and SI
Sukhwinder Singh, Crime
Branch.



2026:DHC:3601-DB



2026:DHC:3601-DB

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. These petitions raise a common challenge to NOTE-2 of Rule 1212 of the Delhi Prisons Rules, 2018 (hereinafter referred to as 'Rules') and NOTE-(1) to Rule 1224 of the Rules. They are, therefore, being taken up together for disposal by way of this common judgment.

2. NOTE:-(2) of Rule 1212 reads as under:-

"(2) Simultaneous parole to co-accused is ordinarily not permissible, however, in exceptional circumstances competent authority may consider for reasons in writing for granting parole to co-accused who are family members."

3. NOTE:-(1) of Rule 1224 reads as under:-

"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."

4. The challenge to the above Rules stems out of the rejection, by the order dated 05.03.2024, of the application filed by Sandeep @ Sandy, petitioner in W.P.(CRL) 1832/2024, for being released on furlough, on the ground that his co-convict, who is not a blood relation of the petitioner, has been granted furlough, and in accordance with Note:-(1) of Rule 1224 of the above Rules, simultaneous release of co-convict on furlough is not permissible.



2026:DHC:3601-DB



2026:DHC:3601-DB

5. Briefly stated, the petitioners are amongst six accused persons who were convicted by the learned Trial Court *vide* judgement dated 03.02.2018 in a case arising out of FIR bearing no. 862/2016 registered under Sections 302/201/120B of the Indian Penal Code, 1860 ('IPC') at Police Station Shahbad Dairy, New Delhi. The appeals preferred by the petitioners against their conviction and sentence, being Criminal Appeal No. 399/2018 titled ***Sandeep@ Sandy v. State (Govt. of NCT of Delhi)*** and Criminal Appeal No. 391/2018 titled ***Vijay Dahiya v. The State***, were partly allowed by this Court *vide* a common Judgment dated 26.06.2023. While the conviction of the petitioners was upheld, the sentence awarded was modified to imprisonment for life with minimum 20 years of actual imprisonment without any remission. The fine amount and default sentence as awarded by the learned Trial Court were sustained. The Special Leave Petition filed there-against, being SLP (Crl.) No. 16306/2023, was dismissed by the Supreme Court *vide* order dated 13.12.2023.

6. The present challenge has arisen as the petitioner in W.P.(Crl.) 1832/2024 has been denied furlough on the ground that he cannot be released on furlough simultaneously with his co-accused, while the petitioner in W.P.(Crl.) 945/2025 has alleged that he has also been unable to avail furlough since 2024 on account of the same restriction. They therefore, impugn the above two provisions of the Rules, which they contend are being interpreted as completely prohibiting release of co-accused persons simultaneously on parole/furlough.



2026:DHC:3601-DB



2026:DHC:3601-DB

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PETITIONERS:

7. The learned counsels for the petitioners submit that the right of a convict for grant of parole or furlough, if otherwise eligible for the same, cannot be curtailed by the Impugned Rules. They submit that the same would defeat the very object and purpose for which the provisions for grant of parole and furlough have been made. In support of their submissions, they have placed reliance on the judgments of the Supreme Court in *Asfaq v. State of Rajasthan & Ors.*, (2017) 15 SCC 55; and *Atbir v. State (NCT of Delhi)*, (2022) 13 SCC 96, and of this Court in *Dinesh Kumar v. Govt. of NCT of Delhi*, 2012: DHC:2942-DB.

8. They submit that the Rules need to be read down so as to permit simultaneous release of co-accused on furlough unless there are other reasons not to do so, to bring them in conformity with the object of granting parole/furlough to a convict. In support, they placed reliance on the judgments of the Supreme Court in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors.*, (2018) 9 SCC 1; *District Mining Officer & Ors v. Tata Iron and Steel Co. & Anr.*, (2001) 7 SCC 358; *S.R. Batra & Anr. v. Taruna Batra (Smt)*, (2007) 3 SCC 169; *Naresh Chandra Agrawal v. Institute of Chartered Accountants of India and Ors.*, (2024) 13 SCC 241; and, *BR Enterprises v. State of U.P. & Ors.*, (1999) 9 SCC 700.

9. Placing reliance on the judgments of the Supreme Court in *Indian Express Newspapers (Bombay) Private Ltd. & Ors. v. Union*



2026:DHC:3601-DB



2026:DHC:3601-DB

of India & Ors., (1985) 1 SCC 641, and *Supreme Court Employees' Welfare Assn. v. Union of India & Anr.*, (1989) 4 SCC 187, they submit that a subordinate legislation does not carry the same degree of immunity which is enjoyed by a Statute passed by a competent legislature, and must be read in conformity with the primary Statute and the Fundamental Rights so as to prevent it from being declared ultra vires.

10. They submit that an interpretation of the Rules which results in unjust consequences or defeats the legislative object, should be avoided and therefore, the Rules must be interpreted as giving the power to release co-accused simultaneously on parole/furlough, if otherwise they are so entitled. In support of said submission, they placed reliance on the judgments of the Supreme Court in *Assistant Commissioner, Gadag Sub-Division, Gadag, v. Mathapathi Basavannawwa & Ors.*, (1995) 6 SCC 355, and *Commissioner of Customs (Import)* (supra).

11. They submit that if the above Rules are to be strictly enforced, given the number of co-accused, the petitioners may never get a chance to be released on furlough. They demonstrate it in form of chart, detailed reference to which may not be required to be made in the present judgment.

**SUBMISSIONS MADE BY THE LEARNED ADDITIONAL
STANDING COUNSELS FOR THE RESPONDENTS:**

12. On the other hand, the learned Additional Standing Counsels for the respondents submit that parole/furlough cannot be claimed as a



2026:DHC:3601-DB



2026:DHC:3601-DB

fundamental right; rather they are granted basis the discretionary power vested in the competent authority. In support, they placed reliance on the judgments of the Supreme Court in ***State of Gujarat and Another v. Narayan*** (2021) 20 SCC 304, and ***Atbir*** (supra).

13. They submit that the grant of parole/furlough being discretionary, is governed by the Rules which *inter alia* have the object of balancing two competing interests, that is, reformation of the convict and the public policy of securing the interest of the society, and, therefore, the impugned condition/Rules prohibiting co-accused being released on parole/furlough simultaneously, is justified. In support, they placed reliance on the judgment of the Supreme Court in ***State of Maharashtra & Anr. v. Suresh Pandurang Darvakar***, (2006) 4 SCC 776.

14. They submit that the object of the Impugned Rules is to prevent any law and order situation which may be created on simultaneous release of co-accused and therefore, only in exceptional cases of family members being co-accused, are they entitled to be released on parole/furlough simultaneously, if they otherwise make out the required conditions.

15. Placing reliance on the judgment of the Supreme Court in ***Mohd. Hanif Qureshi & Ors. v. State of Bihar***, AIR 1958 SC 731, they submit that the Rules have been framed keeping in mind the Model Prison Rules, 2016 and with the experience gained and therefore, do not deserve to be set aside. In support, they also placed reliance on the judgments of the Supreme Court in ***Charanjit Lal***



2026:DHC:3601-DB



2026:DHC:3601-DB

Chowdhary v. Union of India & Ors., 1950 SCC 833; ***BR Enterprises*** (supra); and, ***Union of India v. Elphinstone Spinning And Weaving Co. Ltd. & Ors.***, (2001) 4 SCC 139.

ANALYSIS AND FINDINGS

16. We have considered the submissions made by the learned counsels for the parties.

17. At the outset, we would note that the distinction between the parole and furlough has been explained by the Supreme Court in its judgment in ***Asfaq*** (supra), 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. Such paroles are normally granted in certain situations some of which may be as follows:

- (i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or*
- (ii) the marriage of the prisoner himself, his son, daughter, grandson,*



2026:DHC:3601-DB



2026:DHC:3601-DB

granddaughter, brother, sister, sister's son or daughter is to be celebrated; or
(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or
(iv) it is desirable to do so for any other sufficient cause;
(v) parole can be granted only after a portion of sentence is already served;
(vi) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and
(vii) parole may also be granted on the basis of aspects related to health of convict himself.

12. Many State Governments have formulated guidelines on parole in order to bring out objectivity in the decision making and to decide as to whether parole needs to be granted in a particular case or not. Such a decision in those cases is taken in accordance with the guidelines framed. Guidelines of some of the States stipulate two kinds of paroles, namely, custody parole and regular parole. "Custody parole" is generally granted in emergent circumstances like:

- (i) death of a family member;
- (ii) marriage of a family member;
- (iii) serious illness of a family member;
- or
- (iv) any other emergent circumstances.

13. As far as "regular parole" is concerned, it may be given in the following cases:

- (i) serious illness of a family member;
- (ii) critical conditions in the family on account of accident or death of a family member;



2026:DHC:3601-DB



2026:DHC:3601-DB

- (iii) marriage of any member of the family of the convict;
- (iv) delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;
- (v) serious damage to life or property of the family of the convict including damage caused by natural calamities;
- (vi) to maintain family and social ties;
- (vii) to pursue the filing of a special leave petition before this Court against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.

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



2026:DHC:3601-DB



2026:DHC:3601-DB

between parole and furlough, few of which are as under:

- (i) Both parole and furlough are conditional release.
- (ii) Parole can be granted in case of short-term imprisonment whereas in furlough it is granted in case of long-term imprisonment.
- (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."

18. The term 'Furlough' is defined by Section 2(h) of the Delhi Prison Act, 2000 (hereinafter referred to as 'the Act'), as under:

"(h) 'Furlough' means leave as a reward granted to a convicted prisoner who has been sentenced to rigorous imprisonment for five years or more and has undergone three years thereof."

19. Furthermore, Rule 1199 of the Rules has also explained the meaning of furlough, as under:



2026:DHC:3601-DB



2026:DHC:3601-DB

“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.”

20. Though there is no definition of ‘parole’ in the Act, Rule 1198 of the Rules has explained the said concept as under:

“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.”

21. As far as the object of grant of parole and furlough is concerned, Rules 1197 and 1200 of the Rules explain the same as under:

“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



2026:DHC:3601-DB



2026:DHC:3601-DB

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.

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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,*
- 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.”*

22. Similarly, the Model Prison Manual, 2016, spells out the object of grant of parole and furlough in Rule 19.01 as under:

“19.01 Parole and furlough to inmates are progressive measures of correctional services. The release of a prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and the community. It also helps him 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. The provisions relating to release of the prisoner on parole and furlough should be liberalised to help a prisoner maintain a harmonious relationship with his family and



2026:DHC:3601-DB



2026:DHC:3601-DB

the society and to be of good conduct during the period of incarceration. The privilege of release on parole and furlough should, of course, be allowed to selective prisoners on the basis of well-defined norms of eligibility and propriety.”

23. In **Asfaq** (supra), the Supreme Court also explained the object of grant of parole and furlough as under:

“17. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, albeit for (sic short) periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

18. The provisions of parole and furlough, thus, provide for a humanistic approach



2026:DHC:3601-DB



2026:DHC:3601-DB

towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.”

24. Having noted the above object and purpose of grant of parole/furlough as being in conformity with the Fundamental Rights guaranteed under Article 21 of the Constitution of India, the Supreme Court in **Asfaq** (supra) also highlighted the balance that needs to be achieved between conflicting rights of the convicts vis-a-vis the society as a whole, by observing as under:

“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,



2026:DHC:3601-DB



2026:DHC:3601-DB

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.

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane



2026:DHC:3601-DB



2026:DHC:3601-DB

treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time being under the furlough leave granted to him by way of a measure of penal reform.”

25. As far as the Rules are concerned, Rule 1208 and 1210 of the Rules give the conditions on which parole may be granted by the Competent Authority. They are reproduced herein-under:

“1208. Subject to fulfillment of conditions stipulated in Rule 1210 below, it would be open to the Competent authority to consider applications for parole on the grounds such as:-

- i. Serious illness of a family member.*
- ii. Critical conditions in the family on account of accident or death of a family member.*
- iii. Marriage of any member of the family of the convict;*
- iv. Delivery of a child by the legally wedded wife of the convict.*
- v. Serious damage to life or property of the family of the convict including damage caused by natural calamities.*
- vi. Sowing and harvesting of crops.*
- vii. To maintain family and social ties.*
- viii. To pursue the filing of a Special Leave Petition before the Supreme Court of India against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.*

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1210. In order to be eligible for release on



2026:DHC:3601-DB



2026:DHC:3601-DB

parole in terms of Rule above:-

I. A convict must have served at least the period of one year in prison excluding under-trial period and any period covered by remission. However, in exceptional cases, where the prisoner has spent more than 3 years as under trial period or half of the sentence of the punishment awarded as under trial then his parole application may be considered, if he has spent at least 6 months in prison as convict.

II. The conduct of the Prisoner who has been awarded major punishment for any prison offence should have been uniformly good for last two years from the date of application and the conduct of Prisoner who has been awarded minor punishment or no punishment for any prison offence in prison should have been uniformly good for last one year from the date of application.

III. During the period of release on parole or furlough, if granted earlier, the convict should not have committed any crime.

IV. The convict should not have violated any terms and conditions of the parole or furlough granted previously.

V. A minimum of six months ought to have elapsed from the date of surrender on the conclusion of the previous parole availed. In emergency, parole may be considered even if minimum period of six months has not elapsed from the date of termination of previous Parole. The emergency may include delivery of a child by the wife of the convict, death of a family member, marriage of children, terminal illness of family members and natural calamities.”

26. Similarly, Rule 1220 of the Rules gives the condition to be fulfilled for being granted furlough, as under:

“1220. A prisoner who is sentenced to 5 years or more of rigorous imprisonment and has



2026:DHC:3601-DB



2026:DHC:3601-DB

undergone 3 years imprisonment after conviction with unblemished record become eligible for grant of furlough.”

27. Rules 1211, 1224 and 1225 of the Rules give the categories of prisoners who shall not be entitled to be released on parole/furlough. They are quoted herein-below:

“1211. In the following cases, parole shall not be granted, except, if in the discretion of the competent authority special circumstances exist for grant of parole;

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 subject to prior approval of Ministry of Home Affairs & Ministry of External Affairs and having valid permission to stay in India.

V. Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered,

VI. If the prisoner is convicted of murder after rape;

VII. If the prisoner is convicted under POCSO;

VIII. If prisoner is convicted for multiple murders whether in single case or several cases.



2026:DHC:3601-DB



2026:DHC:3601-DB

IX. If prisoner is convicted for Dacoity with murder.

X. If prisoner is convicted for Murder after kidnapping for ransom.

XI. If the prisoner is convicted under Prevention of Corruption Act.

XII. If the case is investigated by the Central Bureau of Investigation or Central Agency.

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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.



2026:DHC:3601-DB



2026:DHC:3601-DB

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."

28. The Supreme Court in **Asfaq** (supra) was considering the challenge to the rejection of grant of parole on the ground that the appellant therein had been convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987. The Supreme Court noted that in the matter of grant of parole/furlough, a balance needs to be achieved between the competing interests of the prisoners *vis-a-vis* the society, and held that mere nature of the offence committed by the convict should not be the factor to outright deny the parole and the Competent Authority must keep in view the other factors as well such as the period already undergone by the convict, his conduct in jail,



2026:DHC:3601-DB



2026:DHC:3601-DB

whether the convict is habitual offender or is otherwise considered highly dangerous or prejudicial to the public peace and tranquillity etc. We quote from the judgment as under:

“22. Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity, etc.

23. There can be no cavil in saying that a society that believes in the worth of the



2026:DHC:3601-DB



2026:DHC:3601-DB

individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilised society organised with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. [See Sunil Batra (2) v. State (UT of Delhi) [Sunil Batra (2) v. State (UT of Delhi), (1980) 3 SCC 488 : 1980 SCC (Cri) 777] , Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] and Charles Sobraj v. Supt., Central Jail [Charles Sobraj v. Supt., Central Jail, (1978) 4 SCC 104 : 1978 SCC (Cri) 542] .]

24. It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as “recidivism” reflects the fact that the correctional therapy has not brought (sic any change) in the mind of the criminal. It also shows that criminal is hard core who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits.

25. We are not oblivious of the fact that there



2026:DHC:3601-DB



2026:DHC:3601-DB

may be hard core criminals who by reason of their crime and the methods of dealing with the crime, form associations, loyalties and attitudes which tend to persist. There may be even peer pressure when such convicts are out to commit those crimes again. There may be pressure of being ostracised from delinquent groups which may lead them to commit the crime again. Persistence in criminal behaviour may also be due to personality traits, most frequently due to pathological traits of personality, such as mental defectiveness, emotional instability, mental conflicts, egocentrism and psychosis. In regard to relapse or recidivism, Frank Exner, a noted criminologist and sociologist, points out that the chances of repeating increase with the number of previous arrests and the interval between the last and the next offence becomes shortened as the number of previous crimes progresses [Frank Exner, *Kriminologie*, pp. 115-120] . The purpose of the criminological study is the prognosis of the improvable occasional offenders and that of the irredeemable habitual offender and hard core criminal. To differentiate the recidivists from non-recidivists and dangerous and hard-core criminals from occasional criminals had been enumerated by Exner in the following flowsheet:

- (i) Hereditary weakness in the family life.
- (ii) Increasing tempo of criminality.
- (iii) Bad conditions in the parental home.
- (iv) Bad school progress (especially in deportment and industriousness).
- (v) Failure to complete studies once begun.
- (vi) Irregular work (work shyness).
- (vii) Onset of criminality before 18 years of age.
- (viii) More than four previous sentences.
- (ix) Quick relapse of crime.
- (x) Interlocal criminality (mobility).
- (xi) Psychopathic personality (diagnosis of institutional doctor).



2026:DHC:3601-DB



2026:DHC:3601-DB

- (xii) Alcoholism.
- (xiii) Release from institution before 36 years of age.
- (xiv) Bad conduct in the institution.
- (xv) Bad social and family relations during period of release.

At the same time, as criminality is the expression of the “symptom” of certain disorder in the offenders, they can be easily reformed if they are rightly diagnosed and correct treatment is administered to them.”

29. In **Atbir** (supra), the Supreme Court while considering the entitlement for being released on furlough of a convict whose sentence of death had been reduced to life imprisonment with a stipulation that he 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*’, taking note of the Rules, held as under:

“20. 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 remainder 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 2018 Rules stand foreclosed.

21. As has rightly been pointed out, in the 2018 Rules, 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 2018 Rules 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



2026:DHC:3601-DB



2026:DHC:3601-DB

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 2018 Rules it cannot be said that earning rewards is equivalent to earning remissions.

22. 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 remainder of his natural life, that does not, as a corollary, mean 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 remainder of his natural life.

23. 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.

24. 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



2026:DHC:3601-DB



2026:DHC:3601-DB

would be deemed to be serving the sentence for all time to come.

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33. 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 reformatory 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.

34. 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 2018 Rules 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.

35. 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."

30. From the above, it is apparent that, as was held by the Supreme Court in **Suresh Pandurang Darvakar** (supra) and **Narayan** (supra), while there can be no cavil to the legal plea that parole and furlough cannot be claimed as a matter of right and that the power vested with the competent authority to grant parole/furlough is discretionary in nature, however, from the above discussion, it is also evident that



2026:DHC:3601-DB



2026:DHC:3601-DB

parole and furlough also serve the objective of having a humanitarian approach towards those lodged in jail. This is a salutary objective in conformity with the Fundamental Rights of a prisoner under Article 21 of the Constitution and the Human Rights of such a prisoner. Therefore, a balance needs to be maintained between the rights and duty of the State, on the one hand, to ensure that a person who has violated law and is punished with imprisonment undergoes such punishment and does not cause further threat to society, and on the other hand, the right of such prisoner to live a life of dignity by having a chance to maintain his social ties and to be able to breathe free air, *albeit* for some time.

31. Applying the above principles, in case NOTE:-(2) of Rule 1212 and NOTE:-(1) of the Rule 1224 are to be read as completely prohibiting simultaneous parole/furlough being granted to co-accused persons, it may defeat the very object for which the provisions of parole and furlough have been introduced. As explained by the learned counsels for the petitioners, and not seriously disputed by the learned counsels for the respondents, in the present petitions itself, there can be a grave possibility that the petitioners would not get an opportunity to be released on furlough for years together as one or the other co-accused may have been released on parole or furlough at the same time.

32. The said provisions, therefore, advisedly use the expression “ordinarily”, which in itself implies that while there is discretion to grant of simultaneous parole/furlough to a co-accused, “ordinarily” it



2026:DHC:3601-DB



2026:DHC:3601-DB

is not permissible. Therefore, while there is no complete embargo on the Competent Authority to grant simultaneous parole/furlough to co-accused persons, however, ordinarily the Competent Authority should ensure that simultaneous parole/furlough is not granted to co-accused persons.

33. Grant of parole being for specific reasons, in case such reasons are being made out by the co-accused, parole can be granted simultaneously to the co-accused. Similarly, in case there are large number of co-accused and it is otherwise not possible to grant furlough to such co-accused at different times, the furlough can be granted to co-accused simultaneously.

34. In considering the application for parole/furlough, the Competent Authority would keep in view, apart from other relevant circumstances, whether grant of simultaneous parole/furlough to co-accused is a threat of them combining together to commit fresh crime or threaten witnesses or victims or such other like relevant circumstances. The Competent Authority may also examine whether any such threat can be averted by imposing conditions on such co-accused.

35. As far as the mention in the Impugned Rules of the grant of simultaneous parole/furlough to co-accused who are family members, the same is only to highlight one such condition where simultaneous parole/furlough can be granted to co-accused, that is, where they are family members. Mere mention of this exception, however, cannot curtail the general permissible provisions contained in the Impugned



2026:DHC:3601-DB



2026:DHC:3601-DB

Rules. The Impugned Rules are only to restrict and not prohibit the simultaneous grant of parole/furlough to the co-accused.

36. In view of the above, we dispose of these petitions by clarifying that there is no prohibition in the Competent Authority granting simultaneous parole/furlough to co-accused, however, the same is restricted and the Competent Authority while considering such application would examine the same more strictly in accordance with the Rules and keeping in view the competing objectives as have been explained by us hereinabove. The challenge laid by the petitioners to the above Rules, therefore, has no merit.

37. Pending application(s), if any, are also disposed of.

38. There is no order as to costs.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

APRIL 29, 2026/Arya/ik