IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 4964 of 2020

Decided on: 04.06.2021

Yashpal @ Jaspal @ Mintu ...Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram:
Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Chander Bhusan Barowalia, Judge.

Whether approved for reporting?[1] **No**

For the Petitioner : Mr. Malay Kaushal, Advocate.

For the Respondents: Mr. Ashok Sharma, A.G. with Mr. Shiv Pal Manhans, Addl. A.G., Mr. J. S. Guleria and Mr. Bhupinder Thakur, Dy. A.Gs., for the respondents/State.

(Through Video Conferencing).

Tarlok Singh Chauhan, Judge (Oral)

The request made by the petitioner for releasing him on parole has been turned down by the respondents, constraining him to file the instant petition for the grant of following substantive reliefs:-

> *i) That this Hon'ble Court may kindly be pleased to issue the writ of mandamus whereby the respondents, more particularly respondent No.2, may kindly be directed to release the petitioner on parole.*

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

ii) That in the alternative the Hon'ble Court may kindly be pleased to issue a writ of mandamus whereby the respondents, more particularly respondents No. 4 and 5, may kindly be directed to submit the verification report afresh pertaining to the petitioner's request/application for release on parole, strictly in terms of the prescribed Rules as framed under the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968, by addressing the factual aspect relating to the grounds on which the application has been preferred.

2. The respondents have opposed the petition by filing reply wherein it has been submitted that the petitioner is undergoing rigorous life imprisonment in Lala Lajpat Rai District and Open Air Correctional Home, Dharamshala, District Kangra, H.P. in connection with case bearing FIR No. 210/2014, registered at Police Station, Indora, District Kangra, H.P. under Sections 302, 201, 120-B and 34 IPC and due to the non-recommendation of the District Magistrate, Moga on the ground that there is apprehension of breach of law and order and the other party has showed apprehension of danger to his life, in case the petitioner is released on parole.

3. Now the moot question is whether the request for grant of parole can be rejected only on the ground that the petitioner has been convicted for a serious and heinous offence.

4. It is more than settled that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a

discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The Court cannot exercise these powers, though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules.

5. The Hon'ble Supreme Court has considered in detail the nature, object, purpose and parameters for grant of parole subject to which parole can be granted in ***Asfaq versus State of Rajasthan and others, (2017) 15 SCC 55***, wherein it was observed as under:

> *"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.*
>
> *(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. {See State of Maharashtra and Another v. Suresh Pandurang Darvakar (2006) 4 SCC 776; and State of Haryana and Others v. Mohinder Singh, (2000) 3 SCC 394.*

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, al beit for 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 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.

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 threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program 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 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.

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 categorized 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 office, 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 god conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.

23. There can be no cavil in saying that a society that believes in the worth of the 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 civilized society organized 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 (II) v. State (UT of Delhi) (1980) 3 SCC 488 , Maneka Gandhi v. Union of India (1978) 1 SCC 248 and Charles Sobraj v. Superintendent Central Jai, Tihar, New Delhi, (1978) 4 SCC 104.

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 in the mind of the criminal. It also shows that criminal is hardcore 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."*

6. It is evidently clear from the aforesaid judgment that the Hon'ble Supreme Court itself emphasized on the aspect of rehabilitation, continuity of life and constructive hopes for convicts and prisoners and for the reformation even while they are undergoing incarceration.

7. Judged in light of the aforesaid exposition of law, the only ground taken by the respondents to reject the request of parole is that the petitioner has been convicted for a serious and heinous offence and nothing more, cannot itself be a ground for denying the petitioner parole in accordance with the provisions of H.P. Good Conduct Prisoners (Temporary Release) Act, 1968.

8. Before parting, it needs to be observed that as per the instructions imparted by the District Magistrate, Moga, the recommendation of the parole of the petitioner has been rejected on the ground that there is apprehension of breach of law and order and the other party has showed apprehension of danger to his life, in case the petitioner is released on parole. Even otherwise, such questions have already been considered and answered in the judgment referred to here-in-above, which clearly provides that it is only cases where there is some

material before the Court, parole should be extended by taking a humanistic approach so as to afford the convict an opportunity to solve his personal and family problems and enable him to maintain his links with the society.

9. Apart from the above, we may, at this stage, take note of a recent judgment of Hon'ble Supreme Court in case titled as ***Shor Versus State of Uttar Pradesh and Anr***., in Writ Petition (Criminal) No. 58 of 2020, decided on August 05, 2020, wherein the only ground for opposing release of the petitioner therein on probation was that he had been convicted for grave and serious offences and in case he is released, there would be a chance that he may repeat the offences, which would send a negative message against the justice system in the society. The Hon'ble Supreme Court has also held as under:

> *"Pursuant to our order dated 30.10.2017, an order dated 22.01.2018 has been passed in which it is recorded that though the petitioner has undergone 28 years 08 months and 21 days without remission (otherwise including remission) having undergone imprisonment of 37 years 01 month and 18 days, yet premature release cannot be given in the facts of this case as the prisoner along with 20 co-accused committed the murder of 11 persons with deadly weapons and injured others.*
>
> *This being the case, the order states " premature release of this kind of prisoner would send a negative message against the justice system in the society". It was then also mentioned that Senior Superintendent of Police and*

the District Magistrate have confirmed that the prisoner is not incapacitated from committing crime.

Section 2 of the United Provinces Prisoners Release on Probation Act, 1938 (" the U.P. Act" for short) states:

> *"2. Power of Government to release by licence on conditions imposed by them. Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure, 1898 (Act V of 1898), where a person is confined in prison under a sentence of imprisonment and it appears to the State Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the State Government may by licence permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner, or such secular institution or such society belonging to the same religion as the prisoner as may be recognized by the State Government for this purpose, provided such other person, institution or society is willing to take charge of him."*

It is clear that under this Section what has to be seen by the State Government is (i) antecedents (ii) conduct in the prison and (iii) the person, if released, is likely to abstain from crime and lead a peaceable life. If having regard to these factors, the person is released, the State Government may do so on conditions stated in the Section.

A reading of the order dated 22.01.2018 shows that the Joint Secretary, Government of U.P. has failed to apply his mind to the conditions of Section 2 of the U.P. Act. Merely repeating the fact that the crime is heinous and that release of such a person would send a negative message

> *against the justice system in the society are factors de hors Section 2. Conduct in prison has not been referred to at all and the Senior Superintendent of Police and the District Magistrate confirming that the prisoner is not "incapacitated" from committing the crime is not tantamount to stating that he is likely to abstain from crime and lead a peaceable life if released from prison*.

10. The issue in question is otherwise squarely covered by the judgment rendered by a Co-ordinate Bench of this Court in ***CMP No. 3970 of 2020 in CWP No. 2931 of 2019, titled 'Mrs. Har Dei versus State of Himachal Pradesh & others***', decided on 03.06.2020 and the judgment passed by this Bench in ***CWP No. 414 of 2020, titled Mrs. Kavita Thakur versus State of H.P. and others***, decided on 25.06.2020, ***CWP No. 529 of 2018, titled Jagat Ram Versus State of Himachal Pradesh and others***, decided on 26.06.2012 and ***CWP No. 663 of 2020, titled Sajid versus State of Himachal Pradesh and others***, decided on 29.06.2020.

11. Similar reiteration of law can also be found in the judgments rendered by Division Bench of this Court in ***CWP No. 1664 of 2020, titled as Paramjit Singh @ Pamma vs. State of H. P. & Or***s., decided on 07.08.2020 and ***CWP No. 1497 of 2020, titled as Anil Kumar vs. State of H. P. & Ors.***, decided on 07.10.2020.

12. In such circumstances, we are left with no other option, but to allow the present petition. Accordingly, the present

petition is allowed and the respondents are directed to release the petitioner on parole for a period of 28 days, after taking requisite personal and surety bonds.

13. However, before parting, it is clarified that in case the convict violates or breaches any condition of parole order or create law and order problem, then it shall be a factor to cancel the parole so granted by this Court and shall also be a relevant factor for considering the future request of the convict made in this regard.

14. The writ petition is disposed of as aforesaid, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

4th June, 2021
(GR.)