

CRWP-7247-2023(O&M)

2023:PHHC:135523-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-7247-2023 (O&M)

Date of Decision: October 17, 2023

Kapil

...Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Hoshiar Singh Jaswal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

RITU TAGORE, J

1. Prayer in this petition is for quashing the order dated 06.07.2023 (Annexure P-1) passed by respondent No.1-Divisional Commissioner Ambala, District Ambala (Sanctioning Authority), whereby petitioner's request for releasing him on regular parole for ten weeks has been rejected.
2. Petitioner along with others was convicted and sentenced to undergo life imprisonment under Section 302/34, 10 years under Section 364/34 IPC and six months under Section 120-B/34 IPC by the learned trial Court Palwal. Criminal Appeal No.730-DB of 2016 against said conviction and sentence is pending for adjudication. The petitioner applied for ten weeks parole to meet his family members. Same was rejected vide impugned order

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dated 06.07.2023 (Annexure P-1). Aggrieved therefrom, present criminal petition has been filed.

3. Learned counsel for the petitioner submits that petitioner is entitled to be released on parole under Section 3 of Haryana Goods Conduct Prisoners (Temporary Release) Act, 2022 (for short, the 'Act') as he fulfills the conditions for regular parole as mentioned in Section 3 (3) of the Act. He has not availed parole earlier and is seeking to meet his family members for the first time. It is submitted that father of the petitioner had already died and his aged mother along with other members is residing at the given address on rent. It is further submitted that conduct of the petitioner has remained good inside the jail throughout. The learned counsel submits that impugned order dated 06.07.2023 is absolutely unjustified and arbitrary. Prayer for release has been rejected on the ground of possibility of his absconding from parole by changing his residence, without any material to support such an assumption. It is contended that impugned order is absolutely illegal, in contravention of the applicable provisions, hence is liable to be set aside.

4. Learned counsel for the State, however opposed prayer of the petitioner on the ground that parole case of the petitioner was rightly rejected by respondent No.1 on the basis of report of Police Commissioner, Gaziabad (UP), respondent No.2-District Magistrate, Gaziabad, UP, who had not recommended release of the petitioner on parole, observing that he might abscond from parole by shifting/changing his residence, causing impediment in legal response. Learned State counsel also contended that remission and furlough are not vested rights of the petitioner. While affirming that as per record petitioner has not availed any furlough/parole till date and has undergone 11 years, 02 months and 05 days of total sentence, and as per

Section 3(1) (2) of the Act, petitioner is eligible for consideration of his case for grant of parole, dismissal of the petition is sought.

5. Heard.

6. Temporary release of the prisoners is considered in terms of Section 3 of the Act (ibid), which is reproduced as under:-

“3. Temporary release of convicted prisoner on regular parole on certain conditions:-

(1) The competent authority shall grant regular parole to a convicted prisoner subject to such conditions and procedure as specified under sections 11 and 12.

(2) The period for which a convicted prisoner may be released under this section shall be ten weeks in a calendar year cumulatively and the convicted prisoner may avail it in two parts:

Provided that in case of delivery of a female convicted prisoner, the period of release under this section shall be six months, beginning from one month prior to the expected date of delivery as certified by the Medical Officer of the jail.

3) Convicted prisoner who has not completed one year of sentence after conviction shall not be eligible for regular parole:

Provided that the restriction shall not be imposed on old aged convicted prisoner of seventy years or above in case of male and sixty-five years or above in case of female.

(4) The report of the Deputy Commissioner of Police or the Superintendent of Police, as the case may be and recommendations by the District Magistrate shall be submitted to the competent authority within time limit as specified under this Act, for temporary release of a convicted prisoner on regular parole.

(5) The period of release under this section shall not count towards the actual sentence of a prisoner. No ordinary remission shall be granted for this period.”

7. Perusal of the aforesaid statutory provision would show that competent authority may pass an order directing temporary release of a prisoner. As per the procedure prescribed, Competent Authority (mentioned

therein) has to verify facts and grounds on which temporary release has been requested. Conditions and procedure for grant of parole are specified in Sections 8 and 11 of the Act.

8. It is relevant to refer to Section 8 of the Act, which reads as under:-

“8. Prisoner not entitled to be released in certain cases:-

Notwithstanding anything contained in this Act, no convicted prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate or the Deputy Commissioner of Police or the Superintendent of Police or otherwise, the State Government or the competent authority is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace.”

9. It is, thus, apparent that in case convict is eligible in terms of the conditions as prescribed in Section 11 of the Act, parole can be denied only in case if his release is likely to endanger security of the State, maintenance of public order or cause reasonable apprehension of breach of peace.

10. Perusal of impugned order dated 06.07.2023 (Annexure A-1) reveals that petitioner’s application for parole has been rejected on the ground that his release might lead to his running away/absconding from parole by shifting/changing his residence.

11. Relevant part of impugned order dated 06.07.2023 reads as under:-

“ As per the report of the District Magistrate, Ghaziabad U.P., the convict may abscond from parole by shifting/changing his residence. There is every possibility of causing impediment in legal response. Apart from this, the District Magistrate, Ghaziabad and Police Commissioner, Ghaziabad have not recommended for the release of the convict on parole. Hence, in view

of the facts discussed above and keeping in mind the reports of the of the District Magistrate, Ghaziabad Police Commissioner, Ghaziabad, the case of Regular Parole for 10 weeks of the convict No.4026/2016 Kapil son of Mahabir is hereby rejected.”

12. It is a settled position of law that even in a situation where there is apprehension of breach of peace or maintenance of public order or endangerment of security of the State on account of release of the convict, it is the duty of the competent authority to apply its mind on the basis of inputs received by them before allowing or denying the benefit in question. There has to be tangible material to arrive at such conclusion. Admittedly, request for parole has not even been rejected on the grounds as mentioned in Section 8 of the Act.

13. It is specifically stated in affidavit dated 13.09.2023 of Mr. Bhupinder Singh, Deputy Superintendent, District Jail, Yamuna Nagar, that petitioner is eligible for consideration of his case for parole. Doubtlessly, temporary release is not a vested right and the same is available in accordance with the applicable provisions. However, once eligibility conditions are fulfilled (as is the case in the present matter), benefit can be denied only in accordance with Section 8 of the Act. Admittedly, no such ground is mentioned in the impugned order neither taken in the reply filed by way of affidavit dated 13.09.2023. On pointed query, learned counsel for the State is unable to point out any such apprehension available on record to show that release of the petitioner is likely to endanger the security of the State, maintenance of public order or cause reasonable apprehension of breach of peace. No rules, regulation or even guidelines have been pointed out before us

which categorizes the reason for rejection in impugned order dated 06.07.2023 to be valid.

14. A sweeping declaration has been made that convict may abscond from parole by shifting or changing his place of residence. Apart from the fact that the same is not a valid ground for denial of parole, there is no evidence for such apprehension as well. Likelihood of absconding while on parole is not a sufficient ground to decline temporary release on parole as mere likelihood of committing a crime is not to be taken as apprehension of a threat to security of State or maintenance of public order. Petitioner has suffered imprisonment of over eleven (11) years. Involvement of the petitioner in the other cases as mentioned in the custody certificate (Annexure R1) *per se* does not afford a ground for rejection of the prayer and it is apparent that the same is not even the consideration for rejection. As per custody certificate attached with the reply, petitioner is on bail in the pending matters and stands acquitted in some of the cases. The benefit of parole is afforded to a convict for maintenance of social and familial ties and to save him from harmful effects of continuous imprisonment and his rehabilitation and reintegration in society. It is always open to the competent authority to impose sufficient and necessary conditions while granting parole.

15. In our considered opinion, rejection of the petitioner's request for parole in the given factual matrix is unsustainable. Impugned order dated 06.07.2023 passed by respondent No.1 is, thus, set aside.

16. Petitioner is ordered to be released on parole for a period of four weeks from the date of his release, subject to his furnishing adequate surety bonds in terms of statutory provisions and to the satisfaction of the competent authority, who would also impose requisite conditions as may be necessary to

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ensure that in case of any change of residence by the petitioner, due intimation be given by him to the authorities and to ensure that temporary release of the petitioner is not misused and he does not indulge in any crime during the said period.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 17, 2023

'Rimpal' / 'om'

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No