

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRWP-392-2014

Date of decision : 23.04.2015

Radhey Sham

....Petitioner(s)

versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S. Bains, Advocate
for the petitioner.

Mr. Deep Singh, Asst. A.G. Punjab.

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ANITA CHAUDHRY, J(ORAL)

1. Radhey Sham resident of Faisabad, Uttar Pradesh was convicted in a murder case, tried at District Jalandhar, Punjab and was sentenced to life imprisonment. His appeal was also dismissed. The petition discloses only these bare facts. According to the petitioner, he sought four week's parole and the process was initiated but no decision was taken. The petitioner filed a petition bearing CRWP No. 685/2013 for directions to the State to dispose of his application within a reasonable time. It appears that the petition did not disclose required particulars and the petition was disposed of with the direction to the petitioner, if advised to file afresh petition on the same cause of action by giving better particulars.

2. The petitioner had pleaded that he approached respondent no.2 several times who forwarded the application to respondent no.3. There is a reference to respondent no.4 but I find from the title that the petitioner had only arrayed three respondents. The petitioner pleaded that his conduct was good and he be granted four weeks' parole.

3. Notice was given to the respondents who initially filed their reply pleading that the case of the petitioner was considered and as per rules, the report of the concerned District Magistrate/Police Authority which was compulsory, was sought for but the report from the District Magistrate Faisabad, Uttar Pradesh was still awaited. It was also submitted that they had sent various reminders but report has not been received and as and when the report would be received, they would take action.

4. The case was adjourned to enable the State to file the latest status report. Adjournments were sought as no reply had been received from District Magistrate, Faisabad. The State was directed to send an urgent reminder and also call for the report through E-mail. On 21.11.2014, it was informed that the District Magistrate, Faisabad had not recommended the case of the petitioner for parole. The affidavit of the Superintendent Central Jail was placed on record.

5. Since the petitioner had not spelled out any reasons as required under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962, petitioner was asked to file an affidavit specifying the heads under which he wanted parole. The same was not filed.

6. The grievance of the petitioner is that he was in custody since a number of years and had previously been allowed parole and he has visited his family and had returned to the jail and there was no reason why the parole was now been denied. It was urged that the District Magistrate, Faisabad has only mentioned that there could be a possibility of the convict being involved in other crime, therefore, the release of the convict on parole was not recommended. It was urged that denial of parole amounted to denial of an opportunity to live and the petitioner wanted to meet his family and the rules entitled him to the benefit of parole. Reliance was placed upon ***Abdul Wahid Vs. State of Rajasthan 1997(3) WLC 405*** and ***Subash Vs. State of Haryana and another 2004(2) RCR (Criminal) 491 (P&H)***.

7. The submission on the other hand was that before the temporary release is allowed the State Govt. has to be consulted and report of the District Magistrate concerned is necessary and the release can be ordered temporarily for purposes which are provided in the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and no reason has been spelled out in the application and the application is vague. It was urged that the District Magistrate on the basis of the report from the concerned Superintendent of Police had given an adverse report which is binding on the State Government.

8. The facts are not disputed. The grievance of the petitioner is that he is in prison for a number of years and was released on parole for his brother's marriage and had returned on

time but when he applied for parole again, his application was not considered for more than a year and it has now been rejected since the District Magistrate had not recommended his release. The petition does not reveal when he had gone on the earlier parole.

9. It is evident from the record that the convict had moved an application for parole which was forwarded to the District Magistrate at Faisabad. After repeated reminders, the report of the District Magistrate, Faisabad has been received and the reason given was that the possibility of the convict being involved in another crime could be there.

10. The Incident (murder) had taken place in the State of Punjab. The family of the convict is residing in Uttar Pradesh. Neither in the report of the SSP or the District Magistrate, Faisabad, the input from which the opinion had been formed by the officers at Faisabad has been revealed. The report given by the authorities at Faisabad is vague. It is true that this Court may not go into the sufficiency of the material but at the same time there has to be some definite material on record worth considering to refuse parole.

11. The purpose to release a prisoner on parole is to reform him. When a convict is sent to the society, it is to watch his conduct and allow him an opportunity to mix up with the family and the society. Keeping in view the object of the rules it will have to be accepted that the refusal of parole should be on clear grounds. The order should not reflect arbitrariness on the

part of the authorities. The convict on the previous parole had shown good conduct, therefore, to reject the request of parole there should have been some definite material to refuse it.

12. For the reasons stated above, the petition is allowed and the authorities concerned are directed to reconsider the matter in accordance with rules and in the light of the observation made above.

A copy of this order be sent to District Magistrate, Faisabad and Superintendent Central Jail, Jalandhar.

(ANITA CHAUDHRY)
JUDGE

23.04.2015

Sunil