

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

CRWP No.207 of 2015 (O&M)

Date of Decision: 19.05.2015

Amit

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.A.S. Trikha, Advocate
for the petitioner.

Mr. Naveen Kaushik, Addl. A.G., Haryana
for respondents No.1 and 2.

S.S. Saron, J.

Mr. Harish Kumar, Kanungo, SDM, Kapashera,
District South West at Delhi has submitted short affidavit of
Ms. Harleen Kaur, SDM/Revenue Assistant (Kapashera),
District South West at Delhi (respondent No.3). The same is
taken on record.

Heard learned counsel for the parties.

The petitioner has filed the present petition for
seeking directions to the Sub Divisional Magistrate, Kapashera
at Delhi (respondent No.3) to accept his bond and two sureties
in the sum of Rs.50,000/- each on his behalf from private/self

employed persons in terms of application dated 20.01.2015 (Annexure P-2) and release him on furlough in accordance with the instructions contained in para 5 of the release warrant dated 19.12.2014 (Annexure P-1) issued by the Commissioner, Gurgaon Division, Gurgaon (respondent No.1).

The petitioner was arrested in case FIR No.254, dated 15.09.2010 registered at Police Station Sector 5, Gurgaon for the offences punishable under Section 302, 201 and 34 of Indian Penal Code ('IPC' - for short). After trial, he was convicted by the learned Additional Sessions Judge, Gurgaon on 18.10.2012. By a separate order passed on 20.10.2012, he was sentenced to undergo life imprisonment, besides, pay a fine of Rs.10,000/- and in default thereof undergo further rigorous imprisonment for a period one year for the offence under Section 302 read with Section 34 IPC. He was also sentenced to undergo rigorous imprisonment for two years, besides, pay a fine of Rs.2,000/- and in default thereof, to undergo further rigorous imprisonment for a period of two months for the offence under Section 201 read with Section 34 IPC. Both the sentences were ordered to run concurrently.

Criminal Appeal No.D-1136-DB of 2012, against the said order of conviction and sentence is pending in this Court and was admitted on 07.12.2012.

The petitioner while undergoing his incarceration, applied for temporary release on furlough in terms of Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' for short), which has been allowed to him by the Commissioner, Gurgaon Division, Gurgaon (respondent No.1) and a release warrant dated 19.12.2014 (Annexure P-1) has been issued on certain conditions one of which is that the prisoner (i.e. the petitioner) shall, before his temporary release furnish to the satisfaction of the Sub Divisional Magistrate Kapashera at Delhi (respondent No.3) a bond and two sureties in the sum of Rs.50,000/- each for faithful observance of the conditions specified in the warrant.

The grievance of the petitioner is that the learned Sub Divisional Magistrate, Kapashera at Delhi (respondent No.3) has asked for government official sureties which the petitioner is unable to furnish, therefore, he has filed the present petition.

In terms of the reply that has been filed by Shri Kulbir Singh, Superintendent, District Jail, Gurgaon on behalf of respondents No.1 and 2, it is stated that furlough to the petitioner has been granted vide order dated 09.05.2014 (Annexure R-1) and the Commissioner, Gurgaon Division, Gurgaon has issued release warrant dated 19.12.2014 (Annexure R-2). One of the conditions for release on parole is that the petitioner shall, before his temporary release, furnish

to the satisfaction of the Sub Divisional Magistrate, Kapashera at Delhi (respondent No.3) a bond and two sureties in the sum of Rs.50,000/- each for faithful observance of the conditions specified in the warrant.

In the affidavit of Ms.Harleen Kaur, SDM/Revenue Assistant (Kapashera), District South West, Delhi (respondent No.3), it is submitted that police report against the convict (petitioner) is negative so, apprehension of law and order problem could not be ruled out. Accordingly, sureties by private persons were deemed not satisfactory. In view of the above, government official sureties were deemed fit for faithful observance of the conditions specified in the warrant and to ensure that the convict (petitioner) does not misuse the period of his release.

Along with the reply, the learned Sub Divisional Magistrate, (Kapashera), District South West at Delhi (respondent No.3) has submitted the report dated 4.7.2014 of Sh. Sandeep Kumar, SI, Police Station Chhawla in which it is stated that after receiving the reference, he visited the given address H. No. 53, Kh. No. 24, Qutub Vihar, Phase II, Goyla Dairy, Delhi where the father of the convict Amit (petitioner) was found living with his family. A local enquiry was conducted (statement attached). During the local enquiry, the neighbours refused to give in writing but informed him that the convict Amit (petitioner) if allowed to come on

furlough may cause trouble in the neighbourhood. The convict (petitioner) may jump his furlough. Hence, it was requested that the convict Amit (petitioner) may not be allowed furlough. Three statements have been attached with the report which have also been filed. One is the statement of Sh. Gabbar Singh Rawat son of Late Kamal Singh Rawat, resident of A-23, Qutub Vihar Phase-II, Goyla Dairy, Delhi, second is the statement of Smt. Renu Devi wife of Ishwar Singh, resident of Village Tajpur Khurd, Delhi and the third statement is of Sh. Radhey Shyam son of Jai Prakash, resident of H.No. 53, Kh.No.24, Qutub Vihar, Phase-II, D Block, Goyla Dairy, New Delhi i.e. the father of the petitioner. Sh. Gabbar Singh Rawat and Smt. Renu Devi are neighbours of the house where the father of the petitioner namely Radhey Shyam and the petitioner during his parole is to go to the said house. Both the said neighbours namely Gabbar Singh and Renu Devi have stated that they have no objection and there would be no trouble in the neighbourhood in case Amit (petitioner) comes there on parole. Therefore, the police report regarding the breach of peace is based on a wrong reading of the statements of the neighbours Gabbar Singh and Renu Devi which are attached with the report.

In the reply filed by Sh.Kulbir Singh, Superintendent, District Jail, Gurgaon on behalf of respondents No.1 and 2, it is stated that as per Rule 3 (2) (iii)

of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('Rules' – for short) as notified by Notification dated 18.12.2007, the amount of surety bond is specified by the releasing authority i.e. Commissioner of the concerned division. However, there is no rule that the surety should be a government person or non-government person. Rule 3 of the Rules deals with procedure for temporary release. Rule 3 reads as under:

"(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act, shall make an application in form A-1 or form A-2, as the case may be, to the Superintendent of Jail. An adult member of the prisoner's family may also make such an application.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate who shall forward the case with his recommendations to the Director General for grant of parole or otherwise. The releasing authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form-B ordering the temporary release of the prisoner specifying therein-

- (i) the period of release;*
- (ii) the place or places which the prisoner is allowed to visit; and*
- (iii) the amount of surety bond."*

Therefore, according to respondents No.1 and 2, there is no specific requirement of having Government sureties only for temporary release of a convict on parole or furlough as the case may be.

The competent authority i.e. Commissioner, Gurgaon Division, Gurgaon (respondent No.1) having granted temporary release to the petitioner on furlough, the further condition imposed by the Sub Divisional Magistrate (Kapashera), District South West at Delhi (respondent No.3) requiring the petitioner to furnish a government official as surety, was wholly unwarranted, besides, being unreasonable and according to respondents No.1 and 2 is not contemplated by the Rules.

In the circumstances, there has been a wrong reading of the report dated 4.7.2014 of Sh. Sandeep Kumar SI, Police Station Chhawla inasmuch as the said report is not supported with the documents i.e. the statements of the neighbours of the house of the father of the petitioner. Besides, the Rules do not contemplate the asking of an official of the Government to stand as surety. Even otherwise, it is to

be noted that a prisoner who is undergoing life imprisonment does face difficulty in getting a Government official to stand as surety for him whereas respectable persons from his own family, neighbourhood, friends and brotherhood may stand as surety for him.

In Moti Ram v. State of M.P., (1978) 4 SCC 47 the petitioner in the said case was a mason who obtained an order for bail pending his appeal to the Supreme Court which was to the satisfaction of the Chief Judicial Magistrate. The details of the bail were not spelt out by the Supreme Court and the Magistrate ordered that a surety in the sum of Rs.10,000/- should be produced. The Magistrate thereafter refused to accept the surety of the brother of the petitioner in the said case because the brother and his assets were in another district. The appellant therein then moved the Supreme Court again for modifying the original order to the extent that the petitioner be released on furnishing surety to the tune of Rs.2000/- or on executing a personal bond or pass any other order or direction as the Court may deem fit and proper. The Supreme Court held that the victims, when suretyship is insisted on or heavy sums are demanded by way of bail or local bailors alone are *persona grata*, may well be the weaker segments of society like the proletariat, the linguistic and other minorities and distant denizens from the far corners of our country with its vast diversity. In fact the grant of bail

can be stultified or made impossibly inconvenient and expensive if the Court is powerless to dispense with surety or to receive an Indian bailor across the district borders as good or the sum is so excessive that to procure a wealthy surety may be both exasperating and expensive. The problem is plainly one of human rights, especially freedom vis-a-vis the law. The Supreme Court ordered the Magistrate to release the petitioner in the said case on his own bond in a sum of Rs.1000/-.

Therefore, a surety that is to be furnished by a convict for his temporary release on parole or furlough is not to be unreasonable or excessive and in case, it is so remedial orders can be passed by this Court in exercise of its extraordinary writ jurisdiction.

In the circumstances, the writ petition is allowed and the order/direction of the SDM/Revenue Assistant (Kapashera) District South West at Delhi (respondent No.3) asking the petitioner to furnish government official sureties is set aside and quashed. The petitioner shall be granted temporary release on furlough subject to his furnishing personal bond and two sureties in the sum of Rs.50,000/- each for the faithful observance of the conditions as specified in the release warrant dated 19.12.2014 (Annexure P-1) to the satisfaction of the SDM/Revenue Assistant (Kapashera) District South West at Delhi without insisting or asking for

Government official sureties.

(S.S. Saron)
Judge

19.05.2015
yogesh

(Ramendra Jain)
Judge

Note: Whether to be referred to the Reporter: Yes/No.