

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

Criminal Writ Petition No. 500 of 2015

Date of Decision : July 20, 2015

Raghu

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present : Mr. Mohammad Arshad, Advocate

Mr. Praveen Bhadu, Asstt. A.G. Haryana

T.P.S. MANN, J.

The petitioner, namely, Raghu, who stands convicted in FIR No. 106 dated 21.3.2011 registered at Police Station, Sector-10, Gurgaon under Sections 364/302/201 read with Section 34 IPC and sentenced to undergo life imprisonment, has filed the present petition under Article 226 of the Constitution of India read with Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 seeking setting aside of the order dated 25.2.2015 (Annexure P-1) passed by the Commissioner, Gurgaon Division, Gurgaon.

Vide impugned order, the Commissioner rejected the application filed by the petitioner for release on parole on the ground that as per the report of the District Magistrate, Agra, there was no need of repair of the house of the petitioner.

According to the petitioner, he is the only son of his parents. He has two sisters, who are already married. There is none in his family excepting him to look after his parents. On 25.11.2014, the petitioner submitted an application before the Jail Superintendent for being released

on parole in connection with repair of his house. The said application was sent to the District Magistrate, Agra for verification, who reported that no member of the family of the petitioner was residing in his village and on seeing the house of the petitioner which was found locked, it appeared that the house did not need any repairs. Copy of the report submitted by the District Magistrate, Agra has been appended with the petition as Annexure P-2. The petitioner submits that the Gram Panchayat of his village has verified the fact that the petitioner owns a house in the village. In this regard, he has placed reliance upon the verification report (Annexure P-3). Pleading that it is for the petitioner to decide as to whether his house needs repair or not and the report (Annexure P-2) of the District Magistrate, Agra cannot be made the basis to decline the request of the petitioner for his release on parole, the petitioner has prayed for setting aside the impugned order (Annexure P-1) passed by the Commissioner, Gurgaon Division, Gurgaon rejecting his application for his release on parole.

Upon notice, the respondents put in appearance. Reply was filed by way of affidavit of the Superintendent, District Jail, Gurgaon wherein it was stated that on 23.11.2014, the petitioner submitted application for release on parole for four weeks for house repair. His case was sent with recommendation to the District Magistrate, Agra for reporting directly to the Commissioner, Gurgaon Division, Gurgaon for consideration and to intimate the Jail Superintendent, Gurgaon. On 25.2.2015, the parole case of the petitioner was rejected by the Commissioner, Gurgaon Division, Gurgaon, which order was conveyed to the petitioner. The said order was passed in view of the report of the District Magistrate, Agra.

Rejoinder has been filed by the petitioner, which is taken on record. It has been mentioned therein that under Section 6 of the Act, the relief of parole could only be declined to the petitioner if the government was satisfied that his release was likely to endanger the security of the State or the maintenance of public order. Further, in view of the provisions of Section 3(1)(d) of the Act, the Government can release a convict temporarily in case it is satisfied that it is desirable to do so for any other sufficient cause. It has also been pleaded that though the District Magistrate, Agra has stated in his report about the house of the petitioner lying locked and the house not needing any repairs yet the Gram Panchayat had verified the fact that the petitioner has his own house in the village. The question as to whether the accommodation available with the petitioner needed repairs or not is to be decided by the petitioner himself after taking into consideration his financial resources and his own standard of living.

After hearing learned counsel for the parties and going through their pleadings, this Court finds that though the case of the petitioner for release on parole has not been recommended by the Commissioner, Gurgaon Division, Gurgaon yet he has not been impleaded as a party respondent. The State of Haryana has been impleaded as respondent No.1 through the Director General (Prisons) and not through the Commissioner, Gurgaon Division, Gurgaon. The Commissioner of Police, Gurgaon, who has been impleaded as respondent No.3 has no role in the matter. Thus, the petition is bad for mis-joinder and non-joinder of necessary parties.

The District Magistrate, Agra has reported that no member of the family of the petitioner resides in the village and on seeing the house

of the petitioner, it was found locked. Even on looking from outside, it appeared that there was no need to repair the house of the petitioner. The petitioner has relied upon the Panchayatnama (Annexure P-3) signed by the President of Gram Panchayat, Vidholi yet it has not been mentioned therein that the house of the petitioner needs repairs. It has only been stated that the petitioner has a house in the village.

The stand of the petitioner that it is for him to decide as to whether his house needs repairs or not, is not sufficient to come to the conclusion that he needs to be released on parole so as to undertake those repairs. Even if the house does not need repairs, any convict like the petitioner can simply agitate that he has a house which needs repairs and, thus, he be released on parole. The release on parole is not a matter of right but only a concession and, therefore, the petitioner cannot seek his release on parole merely because it is for him to decide whether his house needs repairs or not. The petitioner is presently undergoing life sentence after being convicted in FIR No.106 dated 21.3.2011 registered at Police Station, Sector 10, Gurgaon under Sections 302/364/201/34 IPC. Under these circumstances, the District Magistrate, Agra has not ruled out the chances of the petitioner of running away after being released on parole.

In view of the above, the petition is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

July 20, 2015
satish

(MAHAVIR S. CHAUHAN)
JUDGE