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

CRWP No.1464 of 2016

Date of decision: December 01, 2016

Harbans Lal

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. H.S. Bajwa, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. AG Punjab.

A.B. CHAUDHARI, J (Oral)

Reply by way of affidavit filed by learned State counsel,
today in Court, is taken on record.

Heard learned counsel for the rival parties.

FACTS

By the present Criminal Writ Petition under Article 226/227 of the Constitution of India, the petitioner-Harbans Lal has sought extension of parole for a period of 8 weeks for treatment of his wife.

The petitioner is 70 years old pensioner and is a retired Headmaster from Government Primary School, Ajnala, Amritsar, he having retired on 31.10.2005. He was convicted by the trial Court in a criminal complaint case No.753 of 2005/2011 that was instituted on 16.12.2005/01.07.2011 and was sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay fine amounting to

₹1,000/- for bouncing of cheque in the sum of ₹1.5 lacs in a case under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') vide judgment dated 08.10.2012. The petitioner filed a criminal appeal No.23480 of 2012/2013 against the said judgment of conviction before the Additional Sessions Judge, Amritsar. The appeal was, however, dismissed by the lower Appellate Court on 12.05.2014. He was, thereafter, arrested by warrants on 13.07.2016 and was lodged in Central Jail, Amritsar. The wife of the petitioner suffered from cancer in January 2016 and was operated for cancer and has been taking treatment in Shri Guru Ram Das Charitable Hospital, Sri Amritsar, i.e. before his arrest. After the petitioner was lodged in Jail as aforesaid, he applied for parole to look after his wife and the Superintendent, Central Jail, Amritsar granted him parole of 21 days from 21.07.2016 till 18.11.2016.

The wife of the petitioner, has by now, undergone 8 cycles of chemotherapy and is required to be brought to hospital from time to time. The next date is 29.12.2016 for the same purpose and therefore, he has applied for extension of parole.

Learned counsel for the petitioner submits that against the judgment of dismissal of his appeal by the lower Appellate Court, petitioner would prefer revision petition before this Court within a period of 2 weeks and looking to the continued ill-health of his wife, he has to look after her as there is no other member in the family to do so. He further submits that the wife of the petitioner has to be taken to

the Hospital again on 29.12.2016 and therefore, sought extension of

parole.

CONSIDERATIONS

I have heard learned counsel for the petitioner as well as learned State counsel.

Learned State counsel fairly pointed out to me the reply by way of affidavit filed by Dr. Bal Krishan Singla, PPS, Assistant Commissioner of Police, North, Amritsar City. Paras 3 and 4 of the same read thus:-

“3. That it is most respectfully submitted that verification has been got conducted through In-charge Police Post Majitha Road Bye Pass with respect to the claim being made by the petitioner in the present petition and it has been revealed that Sashi Kiran wife of the petitioner is a cancer patient of 3rd stage and she is taking treatment of this disease from Sri Guru Ram Das Hospital and Cancer Institute, Vallah, Amritsar.

4. That it is most respectfully submitted that it has also been revealed that the petitioner has three daughters and one son, who all are married and they all live at Delhi, due to which the petitioner himself is taking care of his ailing wife, who was checked on 28.11.2016 and has further been called on 29.12.2016 for further checkup and prescription.”

It is, thus, clear from the reading of the above paragraph of reply by way of affidavit that the submissions in the petition made by the learned counsel for the petitioner are correct. The petitioner has three daughters who are married and live at Delhi and that is why, the petitioner is only person who has to look after his wife. It is also stated

that the petitioner's wife is a cancer patient and is taking treatment in the Hospital. It is also fairly stated that the wife of the petitioner has now been called on 29.12.2016 for further checkup and prescriptions. Thus, the facts stated by the petitioner are almost correct. It is in this background, this Court finds that it is necessary to exercise the extra-ordinary jurisdiction for ordering release of the petitioner from Jail not on parole but on regular bail by suspending the sentence awarded to him by the Courts below, particularly, because the learned counsel for the petitioner has stated that the petitioner would file the revision petition before this Court within 2 weeks and would pray for suspension of sentence. According to the counsel for the petitioner, revision petition could not be filed earlier due to the detection of cancer to the wife of the petitioner and the surgery carried out in January 2016 and thereafter, the arrest of the petitioner in July 2016. The petitioner was totally in disturbed mental state. This Court, in that view of the matter, put the counsel for the State on notice as to why the petitioner should not be released on regular bail in the extra-ordinary writ jurisdiction. Learned State counsel replied that in the absence of any revision petition before this Court, no regular bail can be granted to the petitioner by exercising extra-ordinary writ jurisdiction.

I have given deep consideration to the entire matter and the above factual matrix. In my opinion, the petitioner was convicted and sentenced in a private complaint case under Section 138 of the N.I. Act and no in any criminal case under criminal laws. It appears that the

petitioner's cheque for ₹1.5 lacs had bounced but surprisingly enough, the petitioner has been handed-down the imprisonment for 2 years, which is certainly on too higher side. The petitioner is a respectable retired Headmaster of a Government Primary School whose age is now 70 years. His wife is suffering from cancer and has been operated and requires regular treatment by going to the Hospital. The petitioner has to be with his wife as all the three children are in Delhi. The petitioner is in Jail since 13.07.2016. In ordinary course, the sentence awarded to the petitioner would have been suspended by this Court looking to the amount of cheque and the sentence awarded to him. This Court, therefore, finds that it is wholly unnecessary to grant him parole from time to time and rather the petitioner should be released on bail by suspending the sentence particularly because the counsel for the petitioner has made statement that the revision petition would be filed within 2 weeks in this Court. This Court is under an obligation to consider the fact that the petitioner is 70 years old pensioner and must be in distress state of mind right after detection of cancer to his wife, her surgery and thereafter, his arrest. This Court, therefore, exercises its extra-ordinary writ jurisdiction invoked by the petitioner for granting him regular bail by suspending his sentence in criminal complaint case No.753 of 2005/2011 and criminal appeal No.23480 of 2012/2013 by granting him the said relief *ex debito justitiae*. In my opinion, it is the requirement of justice in the peculiar facts of the present case that the petitioner should be ordered to be released on regular bail instead of asking him to apply repeatedly for extension of

parole. The petitioner is not hold guilty of commission of any offence involving moral turpitude or any offence against the society.

The upshot of the above discussion is that the following order will have to be passed:-

ORDER

- (i) CRWP No.1464 of 2016 is disposed of, with a direction that the petitioner shall be released on furnishing personal bond in the sum of ₹5,000/- with the Jail authorities;
- (ii) Petitioner shall, thereafter, furnish regular bail bonds within 8 weeks, in the sum of ₹5,000/- with one surety in the like amount subject to the satisfaction of the trial Court;
- (iii) Petitioner is granted liberty to file revision petition against his conviction within a period of 4 weeks from today, failing which the order granting bail shall come to an end.

(A.B. CHAUDHARI)
JUDGE

December 01, 2016

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Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**