

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Writ Petition No.453 of 2016

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Date of decision:9.11.2016

Vijay Singh

...Petitioner

v.

Union of India and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. Vivek Singla, Standing Counsel for respondents
No.1 and 2-UOI.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

This criminal writ petition has been filed under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. read with Section 3(1)(d) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as 'the Act') to issue order to the respondents to release the petitioner on parole for six weeks for agriculture parole.

It has been stated in the petition that the petitioner was tried by the Summary General Court Martial under Section 302 R.P.C. and was found guilty and he was convicted under Section 302 R.P.C. and sentenced to reduce to the ranks, imprisonment of life and dismissed from service vide

order dated 14.8.2006. SWP No.321 of 2008 filed by the petitioner before Hon'ble High Court of Jammu and Kashmir was transferred to Hon'ble Principal Bench at Delhi and was re-numbered as T.A. No.09 of 2012 titled as “Ex-Naik (SKT) Vijay Singh Versus Union of India” and the same came up for final hearing on 10.09.2012 and the TA was dismissed vide order dated 10.9.2012. The SLP filed by the petitioner was also dismissed by the Hon'ble Supreme Court. The petitioner was convicted on 14.8.2006 and he was sent to District Jail, Udhampur and thereafter he was further transferred to District Jail, Bhiwani and at present he is undergoing life imprisonment under Section 302 R.P.C. as prisoner No.10034-C.

Notice of motion has been issued in this case.

Mr. Vivek Singla, learned Standing Counsel has put in appearance on behalf of the UOI and Mr. Brijesh Sharma, learned Assistant Advocate General, Haryana has appeared on behalf of State of Haryana and contested this petition.

I have heard learned counsel for the parties and have gone through the record. Reply has also been filed.

Vide the impugned order in this case, the parole for the purpose of agriculture has been rejected by the competent authority i.e. Officiating General Officer Commanding. It is in the reply filed by the State of Haryana that case of the petitioner for report was initiated by Superintendent Jail, Bhiwani on the request of the petitioner and sent to Commanding Officer by the District Magistrate, Bhiwani with a copy to the Commanding Officer for recommendation/sanction of the temporary release

of the petitioner. The Magistrate, Bhiwani conducted inquiry through the Superintendent of Police, District Bhiwani and Tehsildar Charkhi Dadri. Tehsildar, Charkhi Dadri has reported vide order dated 7.11.2012 that investigation had been got conducted from the S.H.O., Police Station Sadar Dadri. According to the report, it has been stated that local Police has apprehension that if the convict is released on parole, he can do any crime and after completion of parole he will not surrender in Jail and due to this, there will be breach of peace and he has not recommended the parole. Whereas, the Tehsildar Charkhi Dadri has given the report that the reason given by the convict for release is reasonable. He stated in the report that members of family of convict consists wife aged 42 years, elder daughter aged 21 years and younger daughter aged 19 years, who are studying. Convict has two sons, who are aged about 16 and 13 years and are studying. Convict's father has 3½ acres of land. Convict's family has been given 1¾ acres of land and the land has not been given on lease or contract. Vide the impugned order dated 29.2.2016, Lieutenant General, General Officer Commanding-in-Chief by relying upon the letter dated 27.1.2006 rejected the application only on the ground that rules specified that parole is granted on extreme compassionate grounds only. No other ground has been mentioned for rejection of the parole. Copy of the rules dated 27.1.2006 has been placed on record. As per Appendix-D attached along with these rules i.e. "Guidelines and Condition Governing Grant of Parole to Military prisoners in Civil Jails" provides as under:-

“1. The competent authority, on receipt of an application for

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grant of parole from the prisoner, which has been duly recommended by Superintendent of the Prison concerned may consider the request on the following emergency grounds:-

(a) To facilitate the inmates' presence in his family during a period of grave emergency like death or serious illness of father /mother/brother/sister/spouse/children after verifying the genuineness of the case.

(b) To facilitate the inmate in specialized treatment of diseases like, cancer for which no arrangements for such treatment are locally available; in accordance with opinion of civil surgeon and of the Medical Officer of the prison.

(c) Any other emergency/unforeseen contingency like marriage of dependent children in the family, where in the opinion of the competent authority the presence of the inmate is considered essential.

(d) To carry out agricultural process on his land, provided that there is no major male member besides him, in his family to do the farming.

2. While considering the case for grant of parole, the following aspects should also be kept in view:-

(a) A person convicted of serious offences like murder (Sec 302 IPC) rape (Sec 376 IPC), offences punishable under section 34, 35 and 37 of the Army Act and offences under the Official Secret Act 1923 should be granted parole only in exceptional

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emergent cases and that too on the special recommendations of the jail authorities who will confirm that civilian convicts also enjoy the same privilege under the state prison rules.

(b) Grant of parole should normally be considered for a person who has been sentenced to imprisonment for a term of two years or more and who has actually undergone imprisonment for not less than one year. Persons sentenced less than two years imprisonment may not be considered for the grant of parole except for medical reasons.

(c) The Officer-in-Charge of the prison should certify in each case that the conduct of the prisoner in the prison has been uniformly good.

(d) The period of parole should exclude the time required for journey and the day of departure from and arrival at, the prison.

(d) Parole for the second time should only be granted to a person who surrenders on the due date and his conduct has been satisfactory during the period he was outside the jail of parole.

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7. The prisoner shall not be granted parole for more than 2 weeks extendable to a maximum of 6 weeks unless on medical grounds duly supported by medical certificate from the authorities mentioned in para 1(b) above.”

Keeping in view the above rules, it is clear that the parole can be

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granted for agriculture purpose also provided that there is no male members etc. besides his family to do the agriculture. In the impugned order, the competent authority has not discussed any aspect for the purpose of granting parole for the agriculture purposes. Therefore, the order passed by the competent authority is not as per law and also without reasoning and is also non-speaking.

Therefore, the same is set aside. The competent authority is directed to reconsider the representation as per the above rules within six weeks after receiving the certified copy of this order and decide the representation by passing a speaking order as per law within six weeks.

The criminal writ petition is allowed accordingly.

November 9, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No