

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

CRWP No. 895 of 2016 (O&M)

Date of decision: 11.08.2016.

Mohit Kumar

..... Petitioner.

Versus

State of Haryana and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Lajpat Sharma, Advocate, for
Ms. Garima Sharma, Advocate, for the petitioner.

Mr. Randhir Singh, Additional Advocate General, Haryana,
for the respondents.

S.S. SARON, J.

The present criminal writ petition under Article 226 of the Constitution of India has been filed by petitioner - Mohit Kumar seeking his temporary release on parole for a period of four weeks for agricultural purposes after quashing the impugned order dated 12.05.2016 (Annexure P1) passed by the District Magistrate, Ambala (respondent No. 3).

The petitioner was convicted by the learned Additional Sessions Judge, Ambala on 16.11.2013 in case FIR No. 40 dated 10.02.2011, registered at Police Station Mahesh Nagar, Ambala, for the offences punishable under sections 302, 323, 148 and 149 of the Indian Penal Code. He was sentenced to undergo life imprisonment; besides, pay a fine of Rs.5,000/- and in default of payment thereof, undergo simple imprisonment for a period of six months. Against the said judgment of conviction and order of sentence dated 16.11.2013, criminal appeal, i.e. CRA-D No. 331-DB of 2014, is pending in this Court, which was admitted

on 05.03.2014. The petitioner applied for parole to the respondents' authorities which has been declined vide order dated 12.05.2016 (Annexure P1). The petitioner had earlier also applied for parole for three weeks from 19.05.2015 to 10.06.2015. For the said period, the Deputy Commissioner of Police, Ambala City submitted his report to the effect that the conduct of the petitioner was good during the period of parole. However, the said facts have not been taken into consideration while passing the impugned order dated 12.05.2016 (Annexure P1).

Learned counsel for the State has filed reply by way of affidavit of Dr. Rajeev Deputy Superintendent, Central Jail, Ambala on behalf of respondents No. 1 to 3. The same is taken on record.

According to the reply that has been filed, it is submitted that the District Magistrate, Ambala (respondent No. 3) has not recommended the furlough (sic – parole) case of the petitioner vide letter dated 12.05.2016 (Annexure P1) addressed to the Divisional Commissioner, Ambala Cantt. The recommendation was not made keeping in view the report of the Assistant Commissioner of Police, Ambala Cantt. after the matter had been investigated by Inspector Kanwaljeet Singh, SHO, Police Station Mahesh Nagar, Ambala Cantt. According to the investigation that was conducted, it was *inter alia* observed that the petitioner and Tejinder, co-convict of the petitioner, did not surrender in jail after dismissal of their appeal by the High Court at Chandigarh. Besides, there could be conspiracy in case the petitioner was released on parole and he could create tension for the police and the security of the State would be disturbed.

We have given our thoughtful consideration to the contentions

of learned counsel for the parties and with their assistance have perused the record of the case.

The petitioner has sought temporary release for agricultural purposes. Section 3 (1) (c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' - for short) provides for the temporary release of a prisoner where it is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner. The temporary release for such purpose in terms of section 3 (2) (c) of the Act is to be for a period of six weeks. In terms of the proviso thereto, the temporary release under clause (c), i.e. for agricultural purposes, can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks. Besides, section 6 of the Act provides that the prisoners shall not be entitled to be released in certain cases. Section 6 of the Act reads as under:-

“6. Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace.” (Emphasis added).

A perusal of the above shows that a prisoner is not entitled to be released in case the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of

the State or the maintenance of public order or cause reasonable apprehension of breach of peace. Therefore, the reason given for declining the parole is that he can create tension and may not surrender back. In the facts and circumstances of the present case, it is quite unlikely that the release of the petitioner is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace. This is more so for the reason as during his earlier release on parole for the period from 19.05.2015 to 10.06.2015, there was no complaint against him in this regard. Besides, for securing surrender in jail after the expiry of the period of parole, heavy sureties can be taken.

In the circumstances, we find that the impugned order dated 12.05.2016 (Annexure P1) passed by the District Magistrate, Ambala (respondent No. 3) in not recommending the release of the petitioner on parole is bereft of any material particulars; besides, unsustainable in law.

Therefore, the petition is allowed and the order dated 12.05.2016 (Annexure P1) passed by the District Magistrate, Ambala (respondent No. 3) is set aside and quashed. The concerned competent authority shall re-consider the case of the petitioner for his temporary release as expeditiously as possibly and preferably within four weeks of the receipt of the copy of the order.

(S.S. SARON)
JUDGE

11.08.2016
Ramesh

(LISA GILL)
JUDGE

Note:

1.	Whether speaking/reasoned	:	Yes
2.	Whether reportable	:	No