

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

**CRWP No. 1314 of 2016 (O&M)
Date of decision: 25.05.2017.**

Sunny

..... Petitioner.

Versus

State of Punjab and others

..... Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Dr. Bandana Trikha Sachdev, Advocate, for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab, for the respondents.

S.S. SARON, J.

The criminal writ petition under Article 226 of the Constitution of India has been filed for temporary release of the petitioner on parole.

In compliance to the order passed on the last date of hearing, criminal appeal, i.e. CRA-D No. 1033-DB of 2015, filed by the petitioner - Sunny has been attached.

The facts of the case against the petitioner are that SI Rajinder Parshad, who was present at Police Station Sadar, received a message on 08.03.2015 at about 03:10 a.m. from the control room regarding an incident of rape having taken place behind MBD Mall. SI Rajinder Parshad instructed ASI Harmeet Singh, who was already on patrol duty, to reach the place of occurrence. SI Rajinder Parshad also informed Lady ASI Harjinder Kaur and Lady HC Kulwinder Kaur to reach the place of occurrence. SI Rajinder Parshad himself reached the place of occurrence

along with a police party. He joined ASI Harmeet Singh and Lady ASI Harjinder Kaur as also Lady HC Kulwinder Kaur. SI Rajinder Parshad was informed that the prosecutrix had been taken to civil hospital by her colleagues. SI Rajinder Parshad reached Civil Hospital, Ludhiana and found the prosecutrix present there along with her friend - Anchal Ruchi. Fitness certificate of the prosecutrix was obtained and ASI Harjinder Kaur was instructed to record her statement.

The statement of the prosecutrix was recorded in which she stated that she was working in Raddison Hotel, Ferozepur Road, Ludhiana. She returned to her room after duty on 07.03.2015 at about 06:30 p.m. Then at about 08:00 p.m. she went to the room of her friend, which was situated close to the paying guest accommodation of the prosecutrix, behind Ishmeet Academy. She started back from there at about 01:15 p.m. As she was about to reach her room, on the way a white colour Maruti car came from behind. The prosecutrix could only read a portion of the number, i.e. PB-10. The remaining portion of the number plate had a black paper pasted on it. Three clean shaven persons were sitting in the car. They pulled the prosecutrix inside the car. The prosecutrix raised an alarm and screamed, but none came to rescue her as it was night. The said boys stopped the car in a lonely place after passing J-Block side and crossing the under-bridge of Lodhi Club. One of the boys undressed the prosecutrix and the second boy committed rape on her. One boy was sitting on the driver seat. In the meanwhile, on seeing the lights of another vehicle coming from the front side, the boy sitting on the driver seat started moving

the car and took the same to another side where the second boy committed rape on the prosecutrix. The boys were using extremely vulgar language and were speaking in 'Haryanvi' and U.P. dialect. The first of the two boys asked the third boy, who was driving the car, to commit rape on the prosecutrix. However, the third boy said that he would not do so and asked the prosecutrix to accompany him to Ambala, where he was residing. The other two boys continued provoking him. The third boy also committed indecent acts which led to marks on her breast. The boys were calling each other by the names of Vicky and Monu and the third boy was asking them not to take names. The third boy asked the prosecutrix to dress herself and brought her to B-Block, Rajguru Nagar. The said boys snatched the mobile phone of the prosecutrix at the time of pulling her inside. While dropping the prosecutrix, they handed over the mobile phone to her. When the prosecutrix checked her mobile phone, the memory card was found missing. In the meanwhile, the friend of the prosecutrix and the staff of the hotel reached there. The friend of the prosecutrix had already informed the police by dialing telephone No. 100. Within 15-20 minutes, the police also reached at the spot. The prosecutrix along with others went to Civil Hospital where she was medically examined. She could identify the persons on seeing them. The statement of the prosecutrix was endorsed by her room-mate Anchal Ruchi Topo and the same was attested by ASI Harjinder Kaur and SI Rajinder Parshad. On the basis of the said statement, FIR for the offence under Sections 376-D of the Indian Penal Code ('IPC' - for short) was registered against Monu, Vicky and an unidentified person.

After trial, three accused, namely, Badal, Sunny Kumar (petitioner) and Mohan Kumar alias Monu have been convicted by the learned Additional Sessions Judge-cum-Special Judge, Ludhiana on 11.06.2015 for the offence punishable under Section 376-D IPC. By a separate order passed on 12.06.2015, Sunny Kumar (petitioner) has been sentenced to undergo rigorous imprisonment for the remainder of his life; besides, pay a fine of Rs.1,00,000/- (Rs. One lac only), which was ordered to be paid as compensation to the prosecutrix, and in default of payment of fine, undergo further rigorous imprisonment for one year.

The petitioner now seeks temporary release on parole stating that the offence punishable under Section 376-D IPC does not fall under the category of 'hardcore prisoner' as defined in Section 2 (1) (i) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, as amended. Besides, he has maintained good conduct for four months after conviction. His application and the application sent by post by his father - Madan Lal, it is submitted, are to be initiated vide notification dated 23.09.2003. It is stated that the sentence of imprisonment for remainder of life of the petitioner, does not prohibit or exclude him from getting parole to meet his family members.

Reply has been filed by way of affidavit of Mr. Joginder Singh, PPS, Superintendent, Central Jail, Ludhiana, on behalf of respondents No. 1 and 2. It is submitted that the petitioner has undergone one year, eight months and twenty-four days of actual imprisonment as on 06.12.2016. He submitted a representation through his counsel for special

parole to take care of his mother, who was seriously ill. The father of the petitioner also submitted an application for grant of parole to the petitioner. A 'Panchayatnama' was also submitted by the petitioner for grant of six weeks' parole to take care of his mother, who was sick. On the basis of representations, a request was made to the Deputy Commissioner, Ludhiana along with a photocopy of request, conviction warrant and a copy of judgment to verify the facts and send a specific verification report in the light of order passed by this Court in CRM No. 34013 of 2009 decided on 26.04.2010. It was asked specifically whether there was any apprehension to the State regarding security of the convict to release him on parole.

A copy of the order passed by the District Magistrate, Ludhiana on 15.12.2016 has been placed on record. It is submitted that in reference to the case of the petitioner for initiating six weeks' parole was received in the office of District Magistrate. The Commissioner of Police reported that there is danger to public peace (public order) on the convict (petitioner) being released on parole. There is an objection of the local police in case the petitioner is released on parole. Therefore, the release of the petitioner on parole has not been recommended by the Commissioner of Police, Ludhiana.

It is to be noticed that the petitioner is involved in six cases. In the present case, he has been convicted for the offence under Section 376-D IPC and sentenced to undergo rigorous imprisonment for the remainder of his life. He is on bail in four other cases and has been acquitted in one case on 10.05.2016 for the offence punishable under Section 302/34 IPC. It is

also to be noticed that there is one case against the petitioner registered at Police Station Sadar Bazar, Saharanpur for the offence under Section 174-A IPC in which he is on bail. However, the said case relates to an offence of absconding being a proclaimed offender. Therefore, from the material on record, it cannot *per se* be said that the release of the petitioner on parole would not endanger public peace (public order).

In the circumstances, no ground is made out for allowing the petition. However, the petitioner may, if so advised, assail the order passed by the District Magistrate declining the grant of parole in accordance with law.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

25.05.2017
Ramesh

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