

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

CRWP-1449-2016

Date of decision : 28.07.2017

Shehjad

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. R.S. Dhull, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This criminal writ petition under Article 226/227 of the Constitution of India read with Section 3(1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter to be referred as “the Act”) for issuing writ in the nature of certiorari or any other appropriate writ for quashing order dated 04.08.2016 passed by Commissioner, Rohtak Division, Rohtak vide which he had rejected the case of petitioner for grant of parole to repair the house being illegal, unauthorized in the eyes of law or issuing a writ in the nature of mandamus directing respondents / State to grant parole or furlough to the petitioner for

a period of four weeks for house repair and for restoring social ties etc. has been filed by petitioner-Shehjad who was convicted in case FIR No.361 dated 01.09.2002 for offence under Section 15 NDPS Act, 1985, Police Station Chandni Bagh, District Panipat and was sentenced to undergo rigorous imprisonment for 15 years and to pay a fine of ₹1.5 lacs and in FIR No.609 dated 02.11.2010 under Section 8/9 of Parole Act, 1988, Police Station Sadar Karnal and was sentenced to undergo rigorous imprisonment for 06 month and to pay a fine of ₹100/-.

According to the petitioner he had filed a criminal appeal **CRA-D-873-DB-2005** against such judgment of his conviction and order of sentence but the same was dismissed by this Court vide order dated 09.03.2009, for that the petitioner is undergoing life sentence in District Jail, Karnal. According to the petitioner he is maintaining good conduct in jail while undergoing sentence and he has not given any chance of complaint. He had submitted an application for parole to respondent-Superintendent, District Jail, Karnal for house repair and for restoring social ties, who had forwarded such application to Commissioner, Rohtak Division, Rohtak-respondent No.3, but the Commissioner had declined that application vide order dated 04.08.2016. In the petition, the petitioner has contended that this Court while dealing with **CRWP-1673-2010** titled as **Dinesh vs. State of Haryana and others** has passed an order dated 18.11.2010 and had allowed such petition and directed respondents to grant parole to the petitioner in said Section. That Section 6 of the Act provides that release of prisoner on parole can be refused only on the ground that same is likely to endanger the security of the State or maintenance of public order; that it is statutory right of a convict to avail parole under Section 3(1)

(c) of the Act and this relief cannot be refused on any of the ground under Section 6 of the Act. However, in the present case request of petitioner for release on agricultural parole was rejected by competent authority merely on the ground that land was jointly owned by the petitioner and his brother and it was being cultivated by his brother. However, such act of respondent No.3 is unjustified and unsustainable. Inter alia in the petition the petitioner has referred to Section 6 of the Act, which is as under:-

“Prisoners not entitled in Sections 3 and 4, no prisoner shall be released under this Act if, on the report of the District Magistrate, the State Government or an officer authorized 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.

That there is no such like report has come against the present petitioner and also the present petitioner is peacefully undergoing his sentence in the jail.”

According to the petitioner his family is in very poor condition. His old parents, wife and children are living in a house which is in bad condition. With rain and water ahead, petitioner sought parole to restore his social ties by repairing his house etc., the petitioner submits that he is behind bars since last 14 years and 06 months and has liability of old age parents, children and wife; that action of the respondents in not granting parole to the petitioner is violative of Articles 14, 16 and 21 of Constitution of India and Section 3(1)(d) and Section 6 of the Act as amended in the year 2007.

The petitioner has knocked at the door of this Court for redressal of his grievance.

Notice of this petition was given to the respondents / State and it has put in appearance.

Respondents No.1 to 4 have filed joint written reply wherein they have raised preliminary submission that the Parole Act has been enacted to provide temporary release for the prisoners of good conduct on certain conditions and prisoners cannot claim it as a matter of right, since this concession is given for good conduct on certain conditions provided in the Act, it is contended that petitioner was convicted by the Court of Sh. S.C. Goyal, Special Judge, Panipat vide order dated 22.10.2005 and sentenced him to undergo rigorous imprisonment for a period of 15 years and to pay a fine of ₹1.5 lacs in case FIR No.361 dated 01.09.2002 under Section 15 of the NDPS Act, Police Station Chandni Bagh. The petitioner is presently undergoing remaining part of his sentence awarded to him by the trial Court. According to the petitioner, he was also convicted and sentenced to undergo rigorous imprisonment for a period of 6 months and to pay fine of ₹100/- in case FIR No.609 dated 02.11.2010 under section 8/9 Parole Act, 1988, Police Station Sadar Karnal on 13.12.2011. Giving details of the sentence undergone by the petitioner in this case in para No.4 of the reply, it has been contended that the petitioner has actually undergone 12 years, 10 months and 28 days of the sentence. It is submitted that parole case of the petitioner for repair of the house was initiated by answering-respondents and forwarded to concerned District Magistrate, Shamli (UP) for necessary verification and recommendation. The Commissioner, Rohtak Division, Rohtak (competent authority)-respondent No.3 for consideration vide letter No.9872-73 dated 25.06.2015. The concerned District Magistrate Shamli (UP) conducted inquiry through Superintendent of

Police, Shamli (UP). Superintendent of Police, Shamli (UP) submitted his report stating that no criminal case is pending against the petitioner at Police Station Kairana and case FIR No.361 dated 01.09.2002 under Section 15 of the NDPS Act is registered against him at Police Station Sadar Karnal. He had not recommended the parole case of the petitioner. Thus agreeing with the report of Superintendent of Police, Shamli (UP), District Magistrate Shamli (UP) has not recommended release of petitioner on parole and sent his report vide letter No.160-61/PB/Prisoner Shahjad/Parole Report/2015-2016 dated 06.06.2016 to the Divisional Commissioner-respondent No.3. Commissioner, Rohtak Division, Rohtak-Respondent No.3 vide order Endst. No. Parole/3376-77 dated 04.08.2016 had rejected the parole case of the petitioner in view of report of concerned District Magistrate, Shamli (UP) and report of Superintendent of Police, Shamli (UP) who had reported that there is petitioner's wife aged about 30 years in his family. The petitioner came on parole five years ago but did not report back in jail after availing parole and was arrested in another case. The petitioner is of criminal nature having his general reputation in negative.

On merits, material assertions in the petition are controverted whereas pleas taken in the preliminary objections are re-taken while praying for dismissal of the petition.

I have heard learned counsel for the parties, besides going through the record.

The petitioner has been denied parole vide impugned order for the reason that he is a habitual offender and his behaviour is not good; that five years earlier he had gone on parole but he did not return in time and he was arrested in a case in some other State. The petitioner does not fall

within the definition of a hardcore prisoner as is clear from perusal of the order passed by Commissioner, Rohtak Division, Rohtak in Hindi (Annexure P-1). There is nothing on record to show that he is a habitual offender or has been misbehaving with jail staff and fellow inmates which being lodged in jail. In the impugned order there is reference of the petitioner having gone on parole about 5 years earlier but not returning after expiry of parole period and he was arrested in some other State. But then 5 years period have elapsed therefrom and parole cannot be denied to the petitioner for all times to come for the solitary reason. As such, the impugned order passed by Commissioner, Rohtak Division, Rohtak cannot stand judicial scrutiny and is hereby set aside.

Resultantly, Commissioner, Rohtak Division, Rohtak, Haryana-respondent No.3 is directed to look into the matter afresh and pass detailed, well reasoned order in light of the relevant Act and Rules applicable to the petitioner without being prejudiced by the observations made in the earlier order. The whole process be completed within a period of one month from today.

With aforesaid direction the petition stands allowed.

28.07.2017

Gaurav Sorot

**(H.S. MADAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**