

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CrWP No.64 of 2017

Date of decision: 08.05.2017

Sagar Kumar

.... Petitioner

Versus

State of Punjab and Others

.... Respondents

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

Present: Mrs. Bhupinder Pal Kaur Brar, Advocate for the
petitioner.

Mrs. Ritu Punj, Addl. A.G., Punjab for the State.

S.S. Saron, J.

The petitioner Sagar Kumar by way of the present petition under Article 226 of the Constitution of India seeks setting aside of the order dated 07.10.2016 (Annexure P-1) passed by the District Magistrate, Fazilka (respondent No.2) whereby six weeks parole prayed for by the petitioner has been rejected.

The petitioner has been convicted by the learned Additional Sessions Judge, Fazilka on 20.4.2016 for the offences under Sections 376-D/34 Indian Penal Code ('IPC' – for short); besides, Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' – for short). He has been sentenced to undergo life imprisonment and also pay a fine. The petitioner at present is undergoing his life imprisonment at District Jail, Sri Muktsar Sahib. Against the said order of conviction and sentence, a criminal appeal i.e. CRA No.D-503-DB of 2016 has been filed by the petitioner which is pending in this Court.

During pendency of the appeal, the petitioner applied for six weeks parole to meet his family members which has been declined by the impugned order dated 07.10.2016 (Annexure P-1). The said order, as already noticed, is assailed in the present petition.

Reply has been filed by way of affidavit of Smt. Isha Kalia, District Magistrate, Fazilka (respondent No.2). It is submitted that respondent No.2 received letter No.2558 dated 15.08.2016 from the Superintendent, District Jail Sri Muktsar Sahib in which a request was made to recommend parole to the petitioner. A report was sought on the said request from the Senior Superintendent of Police, Fazilka. The latter vide letter No.7631/AC-3 dated 29.09.2016 (Annexure R-1/T) stated that there was apprehension of breach of peace, besides, the local police objected to the release of the petitioner on parole. Therefore, temporary release of the petitioner on parole was not recommended.

It is also submitted that the petitioner falls under the category of a 'hardcore prisoner' as he has been convicted for an offence under the POCSO Act. Therefore, in terms of Section 5A of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('the Act' - for short), a 'hardcore prisoner' is not to be released on parole.

Learned counsel for the petitioner submits that the temporary release of the petitioner on parole has been rejected in view of the report dated 29.09.2016 (Annexure R1/T) of the Senior Superintendent of Police. It is submitted that the said report makes a mention that the petitioner and his family reside in the same village Moujgarh and the girl i.e. the girl with whom the petitioner is alleged to have committed the offence, is still unmarried and that in the event of release of the petitioner, there is apprehension of breach of peace.

In fact, the matter between the two parties i.e. the petitioner and the victim has been compromised and a compromise dated 06.08.2015 (Annexure P-2) was entered into. Therefore, there is no question of any apprehension of breach of peace in the event of the petitioner being released on parole.

In response, learned State counsel has submitted that notwithstanding the alleged compromise (Annexure P-2), the petitioner is nevertheless a 'hardcore prisoner' as defined under Section 2 (aa) of the Act.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties.

The temporary release of the petitioner has been declined on the ground that in the event of his release, there is likelihood of breach of peace as the girl against whom he is said to have committed the offences is still unmarried and is residing in the same village; besides, the petitioner is a 'hardcore prisoner'. Section 5A of the Act, which disentitles a 'hardcore prisoner' for temporary release may be noticed, which reads as under:-

"5A Prisoner not entitled to be released in certain cases.

Notwithstanding anything contained in Sections 3 and 4, -

(a) no prisoner shall be entitled to be released under this Act to whom the death sentence has been awarded or is a hardcore, prisoner;

(b) Notwithstanding anything contained in clause (a), hardcore prisoner may be allowed to be released temporarily on the ground specified in clause (a) or

clause (b) of sub-section (1) of Section 3. However, extra conditions may be imposed on the prisoner at the time of temporary release or furlough after considering all the facts and circumstances of the case."

It is to be noticed that Section 5A (b) of the Act envisages that notwithstanding anything contained in clause (a), a 'hardcore prisoner' may be allowed to be released temporarily on the ground specified in clause (a) or clause (b) of sub-Section (1) of Section 3; however, extra conditions may be imposed on the prisoner at the time of temporary release or furlough after considering all the facts and circumstances of the case.

'Hardcore prisoner' has been defined in Section 2 (aa) of the Act as follows:-

"(aa) "hardcore prisoner" means a person confined in prison under a sentence of imprisonment, who has been convicted of-

- (i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;
- (ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;"

It is on the ground that the petitioner is a 'hardcore prisoner' and there being a threat to breach of peace on his release, he has been held disentitled for temporary release. However, the compromise dated 06.08.2015 (Annexure P-2) between the two parties i.e. the petitioner and the victim was not brought to the notice of the District Magistrate, Fazilka (respondent No.2) and therefore, it

was not adverted to by her. It appears that there is a compromise entered into between the two parties. The effect of the same is to be considered by the District Magistrate, Fazilka (respondent No.2) in her decision making process of an administrative decision. A perusal of the compromise dated 06.08.2015 (Annexure P-2) that has been placed on record shows that the first party i.e. Prabhu Dayal, his wife Savitri and their minor daughter through her mother and legal guardian have submitted that the present case against the second party was got registered due to misunderstanding, without knowing the actual facts. None of them had seen the movie, produced in the case. The Panchayat and respectable persons had got the matter compromised between both the parties. According to the compromise, the grievance of the first party had been redressed and now there was no grudge or enmity between the parties as their differences had been resolved. It is also submitted that the first party does not want to take any action against the second party. The said compromise was entered into on 06.08.2015 and the order of sentence and conviction was passed thereafter on 20.04.2016. It is not shown whether the compromise was tendered in evidence in the trial that was conducted. However, decision for temporary release of a prisoner on parole is to be taken independent of the order of conviction and sentence as it is an administrative decision.

It is well-known that an administrative decision is subject to judicial review in exercise of supervisory writ jurisdiction of this Court under Article 226 of the Constitution of India although this Court is not to act as an Appellate Court. However, a judicial review of an administrative action may relate either to a statutory administrative action or even a non-statutory administrative action. In either of the

eventualities, violation of constitutional provisions or any statutory provision would invalidate the administrative decision.

The dictate of law enjoins that every administrative decision must be reasonable. The principle of reasonableness known as 'Wednesbury principle' has three elements i.e. the authority should take all relevant facts into consideration; it should exclude or irrelevant facts from consideration; and the decision should neither be perverse nor irrational. 'Perverse', means improper or contradictory but in the context of administrative decision symbolizes a decision not supported by any evidence and 'irrational' means an absurd or illogical decision which no person properly advised on the facts would reach at.

In the present case, the relevant fact of there being a compromise between the parties i.e. the petitioner and the victim to the criminal action has not been taken into account by the District Magistrate, Fazilka while considering the case of the petitioner for his temporary release on parole. This, therefore, is in complete violation of the dictate of law in respect of an administrative decision which necessarily would entail the invalidation of the same. The administrative decision dated 07.10.2016 (Annexure P-1) taken by the District Magistrate, Fazilka (respondent No.2), therefore, is to be invalidated for failing to take into account the compromise (Annexure P-2) between the parties i.e. the petitioner and the victim to the criminal action.

Accordingly, the Crl. Writ petition is allowed and the impugned order dated 07.10.2016 (Annexure P-1) passed by the District Magistrate, Fazilka (respondent No.2) is quashed and the matter shall be reconsidered by the District Magistrate, Fazilka (respondent No.2) as soon as possible by taking into account all the

necessary material which are relevant in the decision making process and excluding all facts which are irrelevant. The decision shall hopefully be taken as expeditiously as possible and preferably within six weeks from receipt of copy of the order.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

08.05.2017
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Note:

- (1) Whether the order is speaking/reasoned: Yes.
- (2) Whether the order is reportable : Yes.