

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

CRWP No. 653 of 2017 (O&M)

Date of decision: 02.08.2017.

Sandeep

..... Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mrs. Sarla Chaudhry, Advocate, for the petitioner.

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

S.S. SARON, J.

The criminal writ petition under Article 226 of the Constitution of India has been filed by petitioner - Sandeep for grant of agricultural parole to him for a period of six weeks so as to carry out agricultural operations.

The petitioner was convicted and sentenced to undergo life imprisonment in case FIR No.487 dated 22.09.2013, registered at Police Station Samalkha, District Panipat, for the offences under Sections 302, 201 and 34 of the Indian Penal Code ('IPC' - for short). At present, the petitioner is undergoing his life imprisonment. Criminal appeal, i.e. CRA-D No. 295-DB of 2016, filed by him is pending in this Court.

During confinement of the petitioner in jail, his case for temporary release on parole for agricultural operations under Section 3 (1) (c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988

('Act' - for short) was initiated by the Superintendent of Prison (Acting), District Prison, Karnal. The case was forwarded to the District Magistrate, Panipat (respondent No.2) for necessary verification of the facts and submission of specific report to the competent authority, i.e. the Commissioner, Rohtak Division, Rohtak. The parole case of the petitioner has been declined vide order dated 09.05.2017 (Annexure R1) by the Commissioner, Karnal Division, Karnal.

Notice was issued in the case on 01.06.2017. Reply by way of affidavit of Mr. Ashok Kumar, Superintendent of Prison (Acting), District Prison, Karnal has been filed on behalf of respondents No.1 to 3. It is submitted that the request of the petitioner for temporary release on parole for agricultural operations has been rejected by the competent authority vide order dated 09.05.2017 (Annexure R1/T). It is prayed that the petition be dismissed.

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.

A perusal of the order dated 09.05.2017 (Annexure R1/T) passed by the Commissioner, Karnal Division, Karnal shows that temporary release on parole has been declined to the petitioner on the ground that a report was sought from the District Magistrate, Panipat, who sought a report from the Superintendent of Police, Panipat. In terms of letter written by the Superintendent of Police, Panipat, accused Sandeep (petitioner) son of Lehna it is submitted had illicit relations with Neelam wife of the deceased in the case, namely, Satyawan. In the incident that had occurred in the

present case, Satyawar had been murdered with a common intention. Due to said appalling act, it is mentioned that there was a strong feeling of anger against Sandeep (petitioner) in the village. Therefore, parole has been denied. It is also mentioned that there is an apprehension of breach of public order in case parole is granted to the convict (petitioner).

It is to be noticed that the facts as have been mentioned are that the petitioner committed the murder of Satyawar with whose wife he was having illicit relations. The incident in the case had occurred on 22.09.2013. The petitioner has undergone almost four years of actual imprisonment as on date. Section 6 of the Act envisages that notwithstanding anything contained in sections 3 and 4, i.e. relating to temporary release of prisoners on parole and furlough, respectively, no prisoner is entitled to be released under the 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 or cause reasonable apprehension of breach of peace.

Therefore, temporary release on parole can be denied to a prisoner in case 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. On mere allegations that the villagers would get enraged as the petitioner had undesirable relations with the wife of the person, who has been murdered, may not be such a circumstance to hold that there is likelihood of endanger to the security of the State or the maintenance of public order or that there would be reasonable apprehension of breach of peace.

An act which poses a threat to the State is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order as the case may be for temporary release of prisoners on parole.

It is also to be kept in view that the apprehension expressed by the competent authority that due to the appalling act of the petitioner, the villagers have been disturbed and there is a strong feeling of anger against the petitioner in the village, is also to be considered as to whether the same would be a threat to the public at large or is a case of mere likelihood of breach of law and order which may affect an individual only which is distinct from the public at large. Besides, if there is indeed any likelihood of breach of law and order only, the petitioner can be asked to arrange adequate and/or higher surety so as to ensure that while on parole he would maintain peace and good behaviour which exercise is to be carried out by the Commissioner, Karnal Division, Karnal.

In the circumstances, the petition is allowed and the order dated 09.05.2017 (Annexure R1) passed by the Commissioner, Karnal Division, Karnal is set aside and quashed. The concerned competent authority shall re-consider the case of the petitioner for his temporary release for a period of six weeks as expeditiously as possibly and preferably within six weeks from the date of receipt of the copy of the order.

(S.S. SARON)
JUDGE

02.08.2017
Ramesh

(AVNEESH JHINGAN)
JUDGE

Note: 1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes