

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

CRWP-96 of 2017

Date of decision:-3.8.2017

Parmod

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Argued by : Mr.V.S. Rana, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This writ petition has been filed by petitioner - Parmod, an accused – convict undergoing sentence of life imprisonment in District Jail, Faridabad so awarded to him in FIR No.101 dated 26.4.2004, under Sections 302, 303, 120-B and 34 IPC and Section 25 of the Arms Act, registered with Police Station City Sonapat, District Sonapat by Court of Sessions.

Though the accused-convict had filed an appeal against said judgment of his conviction but he same was dismissed by this Court on 25.2.2002. According to the petitioner, he has maintained good character in jail while undergoing his sentence and has not given any chance for complaint; that earlier he had availed of parole in the month of January, 2016 and surrendered in the jail within time and thereafter, he was granted parole on 14.10.2016 and he was directed to surrender on 26.11.2016; that while he was going to jail for the purpose of surrender on the way he suffered stomach ailment, due to which he was admitted in Shaili Nursing Home near bus-stand, Rohtak, Jhajjar vide CR No.1161 dated 26.11.2016 at 3:00 p.m.; that

doctor of said nursing home treated the petitioner and advised one day rest, due to stomach infection; that after discharge, the petitioner on 27.11.2016 surrendered in the jail before 10 'O' clock, in that way, there was delay of only one day in surrendering in the jail after availing period of parole; that the Governor of Haryana had granted remissions on 1.11.2016 on the occasion of Golden Jubilee of Haryana Day i.e. remissions granted to the life convicts, however, the petitioner was not given that benefit, as such he had served legal notice upon respondents through his counsel on 1.12.2016; that in reply to the notice, Superintendent Jail has stated that benefit of remissions is not admissible to the petitioner as he had surrendered in jail one day late and that petitioner was punished for one day forfeiture of his earned remissions and further the petitioner was debarred for getting parole for six months; that the petitioner has challenged such action of respondent No.2 in not allowing the remissions in term of the order passed by Governor of Haryana on the ground that one day in surrendering in jail after availing parole was not intentional but due to his ailment; that the petitioner has already been punished by Superintendent of Jail by forfeiting one day remission which was judicially appraised by District & Sessions Judge, Faridabad. The petitioner prays that his petition be accepted.

Notice of the writ petition was given to respondents. Reply on behalf of respondents No.1 and 2 has been filed in which preliminary objections have been raised that petitioner is not entitled to invoke the extraordinary jurisdiction of this Court by filing the present petition as no legal or fundamental right of the petitioner has been infringed by the answering respondents; that remission is not right of a convict and it is a concession given to the convicts by State Government after fulfillment of certain conditions; that petitioner was convicted and sentenced to undergo life imprisonment by the Court of Additional Sessions Judge, Sonapat on

22.11.2006 in case FIR No.101 dated 26.4.2004 for offences under Sections 302/323/303/120-B/34 IPC and 25 of Arms Act, registered with Police Station City, Sonapat and to pay a fine of Rs.7,000/- and in default in making payment of fine to undergo further rigorous imprisonment for 7 months, however, fine not paid. He was further convicted in a case registered vide FIR No.371 dated 18.7.2011, under Sections 8/9 Parole Act, registered with Police Station Sadar, Karnal by Court of Additional Chief Judicial Magistrate, Karnal and sentenced for one year simple imprisonment and to pay a fine of Rs.500/- and in default in making payment of fine to undergo further simple imprisonment for 15 days. However, the fine has not been paid and this sentence is to start after expiry of sentence in case FIR No.101 dated 26.4.2004. The details of other disposed of and pending cases are as under:

DETAILS OF DISPOSED OF CASES

1. FIR No.419/2002, under Sections 399/402/34 IPC & 25/54/59 Arms Act, P.S. Dwarka, Delhi (Sentence already undergone on 31.3.2014, but fine of Rs.3,500/- not paid).
2. FIR No.1007/2004, under Section 302/120-B/201/34 IPC, P.S. Sadar Palwal (Acquitted on 16.2.2009).
3. FIR No.371/2013, under Section 42 Prison Act, P.S. Bhondasi, Gurgaon (Acquitted on 18.8.2015).
4. FIR No.112, dated 11.2.2013, under Section 174-A IPC, P.S. Sadar Karnal (undergone on 23.3.2013).

DETAILS OF OTHER PENDING CASES

1. FIR No.139/2001, 855/01 State Versus Devender, under Section 392 IPC, P.S. Beawar (Rajasthan) (On bail w.e.f. 6.1.2016).

It is contended that since the petitioner had surrendered after delay of one day, he was punished by Superintendent Jail by one day forfeiture of his earned remission, which was judicially appraised by District

& Sessions Judge, Faridabad; that as per notification of the Government for remission granted vide Endst. Letter No.36/389/2016-1JJ dated 4.11.2016 in para No.2, it is specifically mentioned that “this remission will also be granted to all the convicts who are on parole/furlough from the jail on Golden Jubilee of Haryana Day i.e.1st November, 2016, subject to the condition that they surrender at the respective jails on the due date after the expiry of their parole/furlough period for undergoing the unexpired portion of their sentence. Therefore, this special remission was not granted to the convict as he had not surrendered in the prescribed time period and disregarded the parole rules by overstaying the parole 1 day. On merits, these very assertions have been reiterated contending that as per Parole Release Warrant of the petitioner his residence is at village Kair, P.S. Jafarpura, Najafgarh, New Delhi but medical certificate produced by the petitioner is from a private medical hospital of District Jhajjar and as per parole warrant, he will not leave his parole station i.e. his village without prior permission of Sub-Divisional Magistrate, Najafgarh, Delhi. Moreover, the said private hospital does not come in the route of his journey to surrender at District Jail, Faridabad and the story of ailment has been fabricated just to offer a plausible action in delay in surrendering in jail after avail of parole period. In the end, these respondents prayed for dismissal of the petition.

I have heard learned counsel for the petitioner and learned State counsel besides going through the case file and I find that there is no merit in the petition.

Admittedly, the petitioner has violated the condition prescribed in the order granting remission by Governor of Haryana that he was to surrender at respective jail on the due date after expiry of parole but he did not do so. The explanation rendered by him that it was for the reason that he had suffered from stomach ailment and was admitted in a private hospital does not

seem plausible and convincing in view of the specific stand taken by respondents in the written reply that the petitioner was to remain at his residence in village Kair, P.S. Jafarpura, Najafgarh during the period of parole and he could not have left that place without permission of SDM, Najafgarh then how could he get admitted in a private hospital at Jhajjar particularly when it does not fall on way while one has to go from village of petitioner to District Jail, Faridabad. The genuineness of the certificate itself comes out to be suspect since it is by a private hospital. Had it been by some Government Hospital, then that would have carried some credibility but not in this case. The petitioner having violated the terms and conditions is not entitled to get benefit so claimed by him.

Under the circumstances, there is illegality or infirmity in the impugned dated 27.12.2016 passed by respondent No.2.

Finding no merit in the petition, the same stands dismissed.

3.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No