

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

CWP No.10056 of 2018 (O&M)

Date of Decision: 27.04.2018

Ramesh

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Krishan Singh, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

C.M. No.6282 of 2018

This application has been moved for placing on record the affidavit of the petitioner.

C.M is allowed and the affidavit of the petitioner is taken on record.

CWP No.10056 of 2018

The present petition has been filed under Articles 226/227 of the Constitution of India read with Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (here-in-after referred to as 'the Act, 1988') for issuance of a writ in the nature of *mandamus* directing the respondents to extend the period of parole of the petitioner for further 13 days as he has already been allowed 15 days' parole w.e.f 17.04.2018 to 01.05.2018.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner is convict in case FIR No.208 dated 28.12.2012 registered at Police Station Salhawas, District Jhajjar for

offence under Section 302 IPC and was sentenced for life imprisonment. Thereafter, he filed an appeal, which is still pending for final adjudication. An application was submitted to the Superintendent, District Jail, Jhajjar for grant of parole to the petitioner for a period of four weeks so that he may get his children admitted in the school for next session. Said application was sent for verification to District Magistrate, Jhajjar, wherein, it was found that the reasons given by the petitioner for release on parole were correct and he was granted parole for a period of 15 days in stead of 28 days. The petitioner was released from jail on 16.04.2018 for getting his children admitted in the school and was directed to surrender on 02.05.2018.

The petitioner has now filed the present petition for extension of period of parole for further 13 days on the ground that he could not arrange money because of short period and there is no other member in the family to arrange money for admission of his daughters in the school. The father of the petitioner had already expired.

Learned counsel for the petitioner submits that for earning the amount, the petitioner has to do the labour work and he is entitled for parole for a period of 28 days for getting admission of his daughters in the school.

The case came up for hearing before this Court on 24.04.2018 and learned counsel for the petitioner was directed to place on record an additional affidavit of the petitioner to show as to what is the source of income of the family and how the expenses are meted out when the petitioner is in jail.

In response to said directions, an affidavit has been filed, wherein, it has been stated that the petitioner was posted as Shift Attendant

in HVPN prior to lodging of FIR. After his conviction, there is no source of income as mother and wife of the petitioner are residing in the village with minor children. He is having two acres of land in his name and his mother. All are earning their livelihood by doing labour work. The amount for the purpose of admission is to be arranged by him by doing labour work.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file.

The facts with regard to conviction and sentence of the petitioner by the trial Court are not disputed. The appeal filed by the petitioner against said judgment of conviction and order of sentence is still pending. By considering the request of the petitioner, he was granted parole for a period of two weeks. Now, by way of filing this petition, the prayer has been made for extension of period of parole only on the ground that he has to arrange money for admission of his children. The petitioner has already been granted parole for a period of two weeks but he has not been able to get the children admitted. Nothing has been mentioned in the petition as to how much amount is required for admission. Simply by saying that more amount is required for the purpose of admission and the petitioner has to do labour work for that, is not sufficient to make out the case of extension of period of parole.

As per provisions of Section 3(1)(d) of the Act, 1988, the convict is entitled for parole for admission of children for a period of four weeks. Said parole may be granted by the State in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette subject to such conditions. As per provisions, the convict can be released on parole for marriage of himself,

his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter. Petitioner is also entitled for grant of parole under clause (c) in case, sufficient reason is there and it can be availed more than once during the year but it shall not exceed six weeks. Under Section 8 of clause "Sufficient cause", the admission of the children is also mentioned. Section 3(1) and (2) of the Act, 1988 are reproduced as under :-

"3. Temporary release of prisoners on certain grounds.--

(1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that -

- (a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or*
- (b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated; or*
- (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or*
- (d) it is desirable to do so for any other sufficient cause.*

(2) the period to do so for which a prisoner may be released shall be determined by the State Government so as not to exceed :-

- (a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks.*
- (b) where the prisoner is to be released on the grounds specified in clause (b) or clause (d) of sub-section (1), four weeks, and*
- (c) where the prisoner is to be released on the grounds*

specified in clause (c) of sub-section (1), six weeks.

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not however, cumulatively exceed six weeks.”

Rule 8 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 is also relevant, which is reproduced as under :-

“8. Sufficient cause (sections 3(1)(d) :- Under Section 3(1)(d) “Sufficient cause may be considered from amongst the following reasons namely :-

- (i) admission in school/colleges/professional institutions of the dependents of the convict.
- (ii) medically scheduled delivery of wife of the convict.
- (iii) house repairs/new construction house owned by the convict. Parole for house repair shall be granted only once in three years.
- (iv) marriage of prisoner's brother's son or daughter to be celebrated in case his brother is not alive.”

The petitioner has already been granted parole for a period of two weeks by considering his request but subsequently, this petition has been moved for extension of period of parole without giving any justified reason. In spite of giving opportunity, no convincing reason has been made out. It is clear from the affidavit that the petitioner is having two acres of agricultural land. No details have been mentioned as to how much amount is required and why the petitioner could not arrange that amount within a period of two weeks.

By finding the reason as vague and non-speaking, the petitioner is not entitled for extension of period of parole. The remission and parole are not vested rights of the prisoners. In fact, they are privileges granted by the State to the convicted prisoners. Therefore, a convicted prisoner cannot claim these two privileges as his vested rights. There is a difference

between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by a Statute. On the other hand, a privilege is granted by the State under certain conditions and privilege by their very nature can equally be taken away by the State. Whereas rights are universal in nature, privileges can be given to certain specific groups and need not necessarily be universal. Remission and parole are part of the reformatory theory of punishment. Since they are privileges granted by the State, it is not necessary that all the convicted prisoners must have the privilege extended to them. Certain categories of prisoners can be refused these privileges. In case the refusal is based on intelligent differentia and has a nexus to the object of the Rules, the refusal is not violative of Article 14 of the Constitution of India. Accordingly, the privilege can be denied under the law. In such a manner, it cannot be violative of Article 21 of the Constitution of India. The personal liberty can be curtailed by judicial order under a procedure established by law.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

27.04.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No