

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

CWP No.10174 of 2018

Date of Decision: 25.04.2018

Dharmraj

....Petitioner

Versus

Director General of Police, Jail Department,
Punjab, Chandigarh and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. B.P.K. Brar, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 23.04.2018 (Annexure P-3) passed by the Superintendent, District Jail, Sangrur, whereby, the claim of the petitioner for grant of parole has been rejected.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was convicted and sentenced to undergo imprisonment for 12 years with a fine of Rs.1 lac with default clause vide judgment dated 23.03.2018 passed by the Additional Sessions Judge, Sangrur in case FIR No.55 dated 14.04.2016 registered under Section 18 of the NDPS Act at Police Station Bhawanigarh, District Sangrur.

Aggrieved by said judgment of conviction and order of sentence, the petitioner had filed an appeal before this Court, which is still pending.

The petitioner applied for parole for a period of four weeks on 25.03.2018 to attend the marriage of sons of his sister-in-law, which is scheduled on 30.04.2018. The claim of the petitioner has been rejected vide order dated 23.04.2018 on the ground that he was not entitled for parole as he was convicted on 23.03.2018. Said order dated 23.04.2018 passed by Superintendent, District Jail, Sangrur is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the claim of the petitioner has wrongly been rejected, whereas, there is no allegation against him that he ever misused the concession of bail during trial and during custody for the last about 19 months. Learned counsel also submits that the marriage is in very close relation as it is the marriage of sons of sister-in-law of the petitioner and his presence is required. Learned counsel further submits that the petitioner is not going to misuse the concession and is also ready to abide by all terms and conditions to be imposed by this Court or by the jail authorities.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

Facts relating to conviction; filing of an appeal and thereafter, rejection of claim of the petitioner for grant of parole are not disputed. The claim of the petitioner for parole has been rejected on the ground that he is not entitled for parole as an application for parole has been moved only after four months of his conviction.

As per provisions of Section 3(1) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (here-in-after referred to

as 'the Act, 1988), the prisoner can be released temporarily for a period as mentioned in sub-section (2), in case, a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill. Parole can be granted for the purpose of marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter. It can also be for the purpose of ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land, which is in possession of the prisoner. The relevant section 3(1) of the Act, 1988 is 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.”

Moreover, the petitioner was convicted on 23.03.2018 and he submitted his application only after four months of his conviction. As per Government Instructions dated 23.10.2003, as mentioned in the order of rejection dated 23.04.2018, the petitioner can make application for parole

not before 23.07.2018. It is also relevant to mention here that even the marriage is not in the close relation of the petitioner and hence, his presence is not required. The marriage is of two sons of sister-in-law of the petitioner, where, his presence is not required.

The concerned authorities are the best Judge of the situation and for that, the petitioner's antecedents and record is relevant. In case, such an opinion has been formed by the concerned authorities, the same cannot be interfered with in the writ jurisdiction. In case, another view is possible, the Court cannot substitute the subjective satisfaction of the competent authority by the judgment of the Court or opinion. More so, it cannot be said to be arbitrary, unreasonable and mala fide. It is well settled that the nature of the offences committed, for consideration of furlough/parole, is germane and relevant factor. The maintenance of peace or good behaviour and conduct is necessary as the crime may affect the society and the same is prejudicial to the interest of public peace. In case of heinous crime, one cannot ignore that if the conviction is for offences like kidnapping, smuggling, dacoity, robbery, then, release of such prisoners on parole/furlough should be considered which are detrimental to public peace and order.

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.

In view of the facts and circumstances as mentioned above, I am of the considered view that no interference is required in the impugned order dated 23.04.2018 passed by the Superintendent, District Jail, Sangrur and as such, the petition, being devoid of any merit, is hereby dismissed.

25.04.2018

gurpreet

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No