

226

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

CWP No.12600 of 2018

Date of decision: September 18, 2018

Vivek alias Vicky

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. S.S. Siao, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

RAKESH KUMAR JAIN, J (Oral)

The petitioner is a life convict, presently lodged in the District Jail, Jhajjar has prayed for quashing the order dated 06.09.2016 (Annexure P-2) by which his application for release on furlough for a period of 3 weeks to meet his family members has been declined.

Learned counsel for the petitioner has submitted that the Commissioner, Rohtak Division, Rohtak, after obtaining the report from the District Police Headquarters, South-West, Delhi, has opined that there are number of active gangs and the petitioner is involved therein. Learned counsel for the petitioner has further submitted that the petitioner is involved only in one case in which he is suffering the sentence and there is no material on record to *prima-facie* prove that the petitioner is a part of any gang which is active in the area of Jhajjar etc.

Learned State counsel has submitted that the application of the petitioner has been declined only on the apprehension that, if the petitioner is released on furlough, he will involve in criminal activities and would create law and order problem but he has not referred to any material on record to show that the petitioner is an active member of any gang, rather he has submitted that the petitioner is involved only in one case in which he is suffering the sentence in the District Jail, Jhajjar.

Learned counsel for the petitioner has relied upon the decision of the Supreme Court in the case of **Union of India and others** versus **E.G. Nambudiri**, 1991 AIR (SC) 1216, wherein it is held that if the order of the authorities is challenged, the authorities should place reasons which must already exist on record. He has also relied upon a Division Bench Judgment of this Court in the case of **Mohit Kumar** versus **State of Haryana and others**, 2016 (4) Law Herald 2869, in which the similar view has been expressed that there must be material with the authorities to hold that the petitioner would create law and order problem in case of his temporary release from the jail.

I have heard learned counsel for the parties and after examining the available record, am of the view that the present writ petition deserves to be allowed because the petitioner is in the jail for the last 7 years and 5 months and has not been released even for once. According to the respondents also the petitioner is involved only in

one case in which he has been convicted and sentenced and no evidence much less, *prima-facie*, has been brought on record by the respondents in their reply to suggest that the petitioner is a member of any active gang. As a matter of fact, the respondents have relied upon the report of the Delhi Police Headquarters, but the Delhi Police Headquarters has also not given any indication as to how the petitioner is involved in any active criminal gang.

Consequently, the present writ petition is allowed and the impugned order dated 06.09.2016 (Annexure P-2) is set aside. The petitioner is directed to be released on furlough for a period of 3 weeks to meet his family members on his furnishing bail bonds to the satisfaction of the District Magistrate Jhajjar. It is needless to mention that the District Magistrate, Jhajjar shall impose appropriate conditions while granting bail to the petitioner to ensure that the petitioner would surrender to the jail authorities after the period of furlough, is over.

(RAKESH KUMAR JAIN)
JUDGE

September 18, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: Yes/No