

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16868 of 2018

Date of Decision: 27.07.2018

Sunil Rana

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S. Mehndiratta, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This is an application for parole under Section 3 (1) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (“1988 Act”).

2. On notice issued on July 12, 2018, in response to the prayer for parole reply by way of affidavit of Vishal Chibbar, Deputy Superintendent, Central Jail, Ambala has been filed on behalf of the respondents. The criminal case history of the petitioner has been mentioned in paragraph 1.

The same reads as follows:-

“1. FIR No.16/2010, U/s. 302/34, 120-B IPC and 25 Arms Act, P.S. Kalayat.

(Convicted & sentenced by the Ld. Court of Sh. D.S. Sheoran, the then Ld. Sessions Judge, Kaithal, on 29.11.2012, to undergo Imprisonment for Life.)

2. FIR No.662 dated 27.10.2009 U/s 398, 307, 332,

353, 120-B IPC & 25 Arms Act, P.S. City Kaithal.
(convicted & sentenced by the Ld. Court of Sh. R.S. Chaudhary, the then Addl. Sessions Judge, Kaithal, on 27.07.2012, to undergo R.I. for 07 years and to pay a fine of Rs.4,250/- & in default of payment of fine, he shall further undergo R.I. for 04 years & 03 months) (Fine Paid).

(Released on dated 13.12.2016 in case FIR No.662/09 after expiry of sentence)

3. FIR No.89/10 U/s 174-A IPC, P.S. Civil Lines, Kaithal

(Convicted & Sentenced to the period already undergone on 01.03.2011 by the Ld. Court of the then Chief Judicial Magistrate, Kaithal)

4. FIR No.483/09 U/s 8/9 HGPC Act, P.S. Assandh.

(Convicted & Sentenced to the period already undergone on 14.05.2011 by the Ld. Court of Sub Divisional Judicial Magistrate, Assandh)

5. FIR No.87/10 U/s 174-A IPC, P.S. City Kaithal.

(Convicted & Sentenced by the Ld. Court of Sh. Rajesh Garg, the then Chief Judicial Magistrate, Kaithal on 04.01.2011 to undergo R.I. for 06 months & to pay a fine of Rs.100/- (Fine Paid).

6. FIR No.88/10 U/s 174-A IPC, P.S. City Kaithal.

(Convicted & Sentenced by the Ld. Court of Sh. Rajesh Garg, the then Chief Judicial Magistrate, Kaithal on 04.01.2011 to undergo R.I. for 06 months & to pay a fine of Rs.100/- (Fine Paid).

7. FIR No. 84/10 U/s 174-A IPC, P.S. City Kaithal.

(Convicted & Sentenced by the Ld. Court of Sh. Rajesh Garg, the then Chief Judicial Magistrate, Kaithal on 01.03.2011 to undergo R.I. for 06 months).

Note: Released in FIR No.87/10, 88/10, & 84/10 after giving the benefit of 427 (2) of Cr.P.C., as the said convict is undergoing life imprisonment and the conviction warrants were returned to the Ld. Court

from Distt. Jail Narnaul as per letter no.4504 dated 02.08.2012, as per record of this jail.

8. FIR No.580/09 U/s. 307, 34, 120-B IPC, P.S. City Kaithal.

(Acquitted on 09.10.2012 by the Ld. Court of Sh. R.S. Chaudhary, Addl. Sessions Judge, Kaithal)

9. FIR No.333/10, U/s 395, 392, 506 IPC & Arms Act, P.S. Sadar Samana,

(FIR was cancelled by the Ld. Court of Sh. Manoj Kumar, Sub Divisional Judicial Magistrate, Samana vide order dated 03.04.2012).

10. FIR No.675 dated 03.11.2009 U/s 397 IPC & 25 Arms Act, P.S. City Kaithal.

(Convicted & sentenced by the Ld. Court of Ms. Sarita Gupta, the then Addl. Sessions Judge, Kaithal, on 21.05.2011, to undergo R.I. for 10 years and to pay a fine of Rs.6,000/- & in default of payment of fine, he shall further undergo S.I. for 03 months).

(Acquitted on 07.08.2015 in compliance the order of the Hon'ble Punjab & Haryana High Court Chandigarh vide orders dated 05.08.2015, conveyed through the Ld. Court of Dr. Nandita Kaushik, Chief Judicial Magistrate, Kaithal vide order no.1561 dated 06.08.2015).

11. FIR No.227/11, U/s 42 Prisoner Act, 120-B IPC, P.S. Sadar Karnal.

(Acquitted on 02.01.2018 by the Ld. Court of Sh. Rajat Verma, JMIC, Karnal)

12. FIR No.78/16, U/s. 42-A Prisoner Act, 188 IPC, P.S. Baldev Nagar, Ambala City. (on Bail dated 07.05.18)”

3. FIR No.195 dated 19.05.2006 was registered in Police Station Assandh, District Karnal under Sections 302/506 IPC in which the petitioner was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹10,000/- by the judgment and order of the learned

Sessions Judge, Karnal. His appeal in CRA-D-259-DB of 2008 was dismissed on January 28, 2013.

4. The petitioner is undergoing life sentence in another FIR No.16 of 2010 registered under Section 302/34, 120-B IPC and Section 25 of the Arms Act registered in Police Station Kalayat District Kaithal. The conviction and sentence was recorded by the learned Sessions Judge, Kaithal in his order dated November 29, 2012 and in some other FIRs including FIR No.662 of 27.10.2009 under Sections 398, 307, 332, 353, 120-B IPC and Section 25 of the Arms Act, registered in Police Station City Kaithal in which he was convicted and sentenced to undergo RI for seven years etc. and fine was imposed.

5. The petitioner was released on August 10, 2009 for six weeks on parole for agricultural purposes sanctioned on July 22, 2009 by the competent authority in the Government of Haryana and was directed to surrender at jail gate on September 22, 2009 but he did not surrender at jail gate and was on the run for 01 year 01 month and 18 days.

6. During his incarceration in Central Jail, Ambala the petitioner suffered a fracture of left femur. He was advised complete hip-replacement by the doctors. He was admitted to Government Medical College and Hospital, Sector 32, Chandigarh on April 16, 2018. The hip replacement surgery was performed on April 18, 2018. He was advised three months' bed rest by the doctors. After his hip replacement surgery performed on April 18, 2018 in Chandigarh he was discharged from hospital on May 01, 2018.

7. The petitioner filed an application for interim bail for recuperation in CRA-D-136-DB of 2013 in FIR No.16 of February 12,

2010. An application was registered as CRM No.15188 of 2018. The Division Bench was pleased to grant concession of interim bail to the petitioner by passing the following order dated May 04, 2018:-

“Report has been submitted to the effect that applicant-appellant Sunil Rana has been operated upon for fracture neck femur with hip dysplasia with upriding trochanter. He remained admitted in Government Medical College Hospital, Sector 32, Chandigarh from 16.04.2018 to 01.05.2018 and has been discharged for follow up after one month of discharge and is at present admitted in H-1 Block of Jail Hospital for better treatment.

Taking into consideration the above said circumstances, applicant-appellant Sunil Rana is granted interim temporary bail till 04.07.2018 subject to his furnishing bail bonds for a sum of Rs.2 lacs with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Kaithal. He would surrender before the jail authorities on 05.07.2018 at 10:00 A.M.

Miscellaneous application is disposed of.

For report regarding surrender, to come up on 11.07.2018.”

8. On expiry of the period of interim bail, the petitioner surrendered to the jail authorities. Thereafter he made an application dated May 08, 2018 to the Jail Superintendent, Central Jail, Ambala for parole on the ground of bed rest after operation. When he heard nothing on the application he filed CWP No.13064 of 2018 which was disposed of on May 31, 2018 after receiving reply. The learned State counsel admitted that representation was pending with the authority concerned and an assurance was given that the same shall be decided at the earliest and not later than 10

days. As per directions, the case of the petitioner for parole has been decided and rejected by the impugned order dated June 29, 2018. There is no dispute that the petitioner was operated for a hip surgery and was advised physiotherapy with full weight bearing walker. He was advised to avoid squatting, sitting and lying down on the floor. As per medical advise the petitioner is admitted in H-1 Block of jail hospital for better treatment and care. A bed and special diet has been provided as advised by the jail doctors for speedy recovery of wounds, as per jail manual.

9. The petitioner was involved in a case of recovery of mobile phone from his possession on March 09, 2016 inside the jail. Case FIR No.78 dated 09.03.2016 under Section 42-A of the Prison Act was registered in Police Station Baldev Nagar, Ambala which is pending in the Court of JMIC, Ambala. For this offence, the State has classified person in possession of mobile phone as “Hardcore” prisoner. In this regard is cited by Mr. Mehndiratta, the Amendment Act, 2012 notified on October 01, 2012. In Section 2, after Clause (a) the following clause has been inserted, namely, sub-clause (aa) defining Hardcore prisoner to mean a person who has been detected of using cell phone or in possession of cell phone or sim card inside the jail premises. As per sub-Section 2 of Section 5-A of the 1988 Act, Amendment Act-2015 the following has been inserted:-

“(2) Notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner, who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major penalty by the Superintendent of Jail, as judicially appraised by the

concerned District and Sessions Judge:

Provided that the five year imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment.

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from the release in future.”

10. The petitioner has completed five years imprisonment.
11. In this regard, the ruling of the Division Bench is in *Gurdeep Singh v. State of Haryana and others*, CRWP No.1374 of 2017 decided on December 07, 2017 wherein the Court has observed and held as follows:-

“In this backdrop, it is difficult to accept that the mere recovery of mobile phone from an inmate against whom there is not even a whisper that he ever misused the phone either to blackmail some one or for demanding ransom or he involved himself in any other nature of crime, would be sufficient to categorise him as a 'hardcore' prisoner. It is only in a case where the inmate is found to have misused the mobile facility for committing another crime while inside the jail, that he should be put into the category of 'hardcore criminals' and be deprived of his statutory right of parole. The petitioner, in the absence of any such allegation, does not fall in that exceptional category. We, thus, set aside the objection raised by the respondents and direct the Competent Authority to consider the case of the petitioner for his release on agricultural parole.”

12. It would be relevant to advert to the medical report of the petitioner following his hip replacement. The Medical Officer, Central Jail Hospital, Ambala City has had the following to say in Annex R-1 attached with the written statement. The prisoner patient seems to be passing into

depression and was counseled by the Psychiatrist on June 29, 2018 in GMCH, Sector-32, Chandigarh. Physiotherapy opinion was taken on June 27, 2018. Patient was advised physiotherapy thrice daily which the jail doctor says is not possible in Central Jail Hospital, Ambala. The prisoner patient finds it difficult to sit down on the floor and is not able to pick normal weight. Presently, he is not in a condition to do his routine work independently. He has been provided special care taken by the jail doctors and requires to be accompanied to toilet, bathroom and besides, help in physiotherapy is needed. He is incapable of doing all the activities on his own.

13. In the facts and circumstances, no doubt the physical condition of the prisoner/petitioner is such that it may be better for him to recuperate in his own home with his family helping out so that his recovery is speedier and his mental depression reduced. It may be that the petitioner jumped parole in 2009, which is serious matter, but yet much time has passed by since then and he had surrendered returned to Jail following orders of this Court granting him interim bail for undergoing surgery at Chandigarh.

14. Having regard to all aspects, this Court is of the view that the petitioner deserves parole for six weeks during which period the police can keep a watchful eye on his movements and whereabouts.

15. Accordingly, the petition is allowed. The impugned order is set aside passed on the ground of past history and recovery of mobile during his incarceration in jail. The petitioner is granted parole of six weeks from the date of release to the satisfaction of the Jail authorities at Ambala/District Magistrate, Ambala.

16. The petitioner will surrender at the jail gate on date and time fixed by the authorities.

27.07.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No