

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

CWP No.5594 of 2018

Date of Decision: 19.03.2018

Deepak

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Anil Mehta, D.A.G., Haryana.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *mandamus* for direction to the respondents to release the petitioner on emergency parole for a period of four weeks for the purpose of admission of the children in school.

The petitioner has been convicted and sentenced for life in case FIR No.446 dated 21.11.2013 registered under Sections 148, 149, 307, 302, 427, 452, 120-B, 216 IPC and Section 27/54/59 of the Arms Act at Police Station Badshapur, District Gurgaon. After conviction by the trial Court, the petitioner filed an appeal before this Court, which is pending after admission. A representation was made by wife of the petitioner to the Superintendent, District Jail, Yamuna Nagar on 07.02.2018 through registered post to release the petitioner on parole for a period of four weeks for admission of the children but no action was taken thereupon.

Learned counsel for the petitioner submits that a certificate has been given by Sarpanch of the Village, wherein, an assurance has been given for maintaining peace in the Village during the period of parole. Neither the claim of the petitioner has been rejected nor granted. Learned counsel also submits that the admission is necessary for the welfare of the children and there is no other male member in the family to make arrangement of money for admission and to get the children admitted in school.

After issuing notice of motion, the report by way of an affidavit of Station House Officer, Police Station Badshahpur, Gurugram has been filed in the Court today and the same is taken on record.

Learned State counsel submits that the elder daughter of the petitioner is seven years of age and is already studying in Class-II in DPS School, Sikenderpur, Gurugram. The son of the petitioner is about five years of age and is presently residing in the house. The father of the petitioner, who is about 57 years of age, is residing in the house of the petitioner and is quite active. Learned counsel also submits that the petitioner is having one brother and all family members are residing in the same house.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that other family members, who are residing in the house of the petitioner, can make arrangement of the money for admission. Petitioner is involved in heinous crime and in case, he is granted concession of parole, there are chances that he may misuse the same.

Heard the arguments of learned counsel for the parties and have

also perused the documents available on the file including the application submitted by wife of the petitioner.

Admittedly, no action has been taken on the written representation which was sent through registered post. Neither the representation has been accepted nor denied. The request of the petitioner has been opposed on the ground that the other family members are also residing in the same house and there are chances that he may misuse the concession of parole.

Sections 3(1)(b) and 3(2)(b) of the Act, 1988 are relevant for deciding the controversy, in the case, in hand, which are reproduced as under :-

“3(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) xx xx xx

(b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) xx xx xx

(d) xx xx xx

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

(a) xx xx xx

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) xx xx xx

The hardcore prisoner has been defined under the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, which is reproduced as under :-

“2. (aa) ‘hardcore prisoner’ means a person, who –

- (i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or;
- (ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone imprisonment at least for a period of twelve months:

Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded.

Explanation – A conviction which has been set aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

- (iii) has been sentenced to death penalty ; or
- (iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail

premises; or

(v) failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.”

There is a specific provision for hardcore prisoners under Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, which is reproduced as under :-

“5A. Special Provisions for Hardcore Prisoners –

Notwithstanding anything contained in section 3 and 4, a hardcore prisoner shall not be released on temporary basis or on furlough:

Provided that a hardcore prisoner may be allowed to attend the marriage of his child, grand-child or sibling; or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse or child, under the armed police escort, for a period of forty eight hours to be decided by the concerned Superintendent Jail and intimation in this regard with full particulars of hardcore prisoner being released, shall be sent to the concerned District Magistrate and Superintendent of Police within twenty four hours.”

Vide Section 2 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, following proviso has been appended after Section 5A :-

“ Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety six hours and for the marriage of his son for seventy two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty four hours, the concerned District Magistrate

and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.”

From the provisions as reproduced above, it is clear that even a hardcore prisoner is entitled to go on parole for a temporary period of 96 hours while in police custody.

The petitioner does not fall under the category of hardcore prisoner and moreover, he is not a hardcore prisoner. Section 6(2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is entitled to be released under the Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order. Meaning thereby, the release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the concerned authority for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment and is involved in many cases. The parole can be declined, in case, the competent authority is satisfied that his release is likely to endanger the security of the State and maintenance of public order. No such eventuality has been mentioned neither in the reply nor in the arguments raised by learned State counsel. The observations made in case **CRM-M No.34013 of 2009** titled as Varun @ **Gullu v. State of Haryana and others** decided on **26.04.2010** are relevant, which are as under :-

“ No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is

regulated by a statute and on fulfilment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

In the cases, which have come up earlier before this Court as per judgments referred to by the learned counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated under Section 6 of the Act. We find that the authorities under the Act have been consistently declining the request for parole or furlough only for the reason of apprehension of breach of peace, whereas there is no such condition under the Act. This is so in spite of numerous judgments of this Court that apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough.”

Admittedly, the administrative decision is subject to judicial review in exercise of supervisory writ jurisdiction of this Court under Article 226 of the Constitution of India. Although this Court is not to act as an Appellate Court but the administrative action or even a non-statutory

administrative action may relate to judicial review. The violation of constitutional provisions or any statutory provision would invalidate the administrative decision. However, every administrative decision must be reasonable. The principle of reasonableness known as 'Wednesbury principle', which is having three elements i.e the authority should take all relevant facts into consideration; it should exclude or irrelevant facts from consideration; and the decision should neither be perverse nor irrational. 'Perverse' means improper or contradictory but in the context of administrative decision, it symbolizes a decision not supported by any evidence and 'irrational' means an absurd or illogical decision.

It has also been admitted by the respondent-State in the reply that the petitioner is having elder daughter, who is seven years of age and is studying in Class-II in DPS School, Sikenderpur, Gurugram. The son of the petitioner is five years of age and is residing in the house. The family has planned to admit their son in the school. No doubt, the father of the petitioner is 57 years of age and has retired from the Army but the decision for taking admission; purchasing books and stationery is also to be taken by the petitioner only. To make all such arrangements, the presence of the petitioner appears to be necessary. Not only, the petitioner has to make arrangements but has to take decision for admitting his elder daughter in the next class or for getting the younger son admitted in the school and his presence is also required. The respondent authorities should have considered the claim of the petitioner but no order has been passed. Meaning thereby, neither the claim has been accepted nor rejected and the authorities concerned are sitting over the matter.

Keeping in view the facts and circumstances as mentioned

above, the present petition is allowed and the petitioner is directed to be released on parole for a period of 15 days from the date of receipt of certified copy of the order. However, on expiry of period of 15 days of parole, the petitioner is directed to surrender before the jail authorities. However, the parole shall be subject to the following terms and conditions :-

(i) The petitioner shall furnish a personal bond in the sum of Rs.2,00,000/- with one local surety of the like amount to the satisfaction of the Jail Superintendent.

(ii)The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.

(iii)The petitioner shall keep away from the area around the residence of the victim and his/her family members.

(iv)Immediately upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.

(v)The period of parole shall be counted from the day after the date when the petitioner is released from jail.

(DAYA CHAUDHARY)
JUDGE

19.03.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No