

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

CWP No.5628 of 2018

Date of Decision: 19.03.2018

Mukesh Kumar

....Petitioner

Versus

The State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Susheel Gautam, 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 *certiorari* for quashing of impugned order dated 16.11.2017 passed by the Commissioner, Karnal Division, District Karnal, whereby, the claim of the petitioner for grant of emergency parole has been declined.

A further prayer has also been made for issuance of direction to the respondents to grant emergency parole to the petitioner for admission of his children in view of provisions of Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1988.

Petitioner is presently confined in District Jail, Karnal in case FIR No.156 dated 08.07.2009 under Sections 302/307/394/397/34 IPC and Section 25/54/59 of the Arms Act registered at Police Station Sadar, Panipat. He was convicted and sentenced vide judgment of trial Court dated

29/30.09.2010. He is undergoing rigorous imprisonment for life. Petitioner was arrested on 13.07.2009 and thereafter, he was in custody not only during trial but after his conviction as well. The request was made by the petitioner for grant of parole, which was declined by the Commissioner, Karnal Division, Karnal vide order dated 16.11.2017 on the ground that there are 12 cases registered against him, out of which two cases are of murder and one case is of attempt to murder. The petitioner jumped parole and fired shot on the police party. His case was not recommended on the ground that he may commit crime again.

In response to notice of motion, the reply has been filed by learned counsel for the respondents-State in the Court today and the same is taken on record.

Learned counsel for the petitioner submits that there is no male member in the family to look after the children and the petitioner was the only bread winner of the family. After the death of petitioner's brother, the petitioner got married to his brother's wife. The parents of the petitioner are old. Learned counsel also submits that the claim of the petitioner has been rejected on the ground that he did not return to jail in time when he was granted parole earlier. Learned counsel further submits that earlier also, the petitioner filed a petition before this Court in the year 2016 but the same was dismissed as withdrawn with liberty to seek his remedy with the respondents. Thereafter, he applied for parole for admission of his children but it was rejected on the ground that total 12 cases have been registered against the petitioner and in case, he is released on parole, there is a danger to the peace of the Society and State.

Learned State counsel has opposed the submissions made by

learned counsel for the petitioner. He submits that the petitioner was released on parole for a period of four weeks for repair of his house on 02.04.2012 and was directed to surrender on 01.05.2012 but he did not surrender on the due date and absconded. Thereafter, he was arrested by the police on 21.10.2012. Learned State counsel also submits that the claim of the petitioner has been considered and rejected on the report/recommendation made by the District Magistrate, Panipat vide order dated 16.11.2017.

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

Undisputedly, the petitioner is undergoing sentence as he was arrested on 13.07.2009 and was in custody during trial and is in custody after his conviction as well.

As per case of the petitioner, his wife, children and old aged parents are there in the family. In the communication dated 01.06.2016 written to the Commissioner, Rohtak Division, Rohtak, the District Magistrate, Panipat has specifically mentioned that there is no danger to the public, if the petitioner is released on parole. The only reason which has been mentioned by the District Magistrate while not recommending the parole is that in the past, the petitioner was granted parole but he did not return to jail well in time and thereafter, he was arrested by the police.

Vide communication dated 01.06.2016, it has been mentioned that the office has no objection in releasing the petitioner on parole to meet his family members. It has also been mentioned that the Superintendent of Police, Panipat has reported that social arrangement and security of state has no danger, in case, the parole is granted to the petitioner. Meaning thereby

the only reason which has been mentioned while declining the parole is that earlier the petitioner did not surrender before the jail authorities and thereafter, he was arrested by the police.

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 claim of the petitioner has been declined only on the ground that he did not surrender before the jail authorities well in time. The petitioner is not hardcore criminal. 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.

In view of the above, the present petition is allowed and the impugned order of rejection dated 16.11.2017 passed by the Commissioner, Karnal Division, District Karnal is hereby set aside. The petitioner is directed to be released on parole for a period of two weeks in the mid of April, 2018. On the expiry of period of parole of two weeks, 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.

19.03.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No