

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

CWP No.7028 of 2018

Date of Decision: 28.03.2018

Mahender Singh

....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. S.S. Mann, Sr. D.A.G., Haryana

DAYA CHAUDHARY, J.

The petitioner was convicted by the trial Court vide its judgment dated 27/29.04.2017 and was sentenced to undergo rigorous imprisonment for life with fine. He filed an appeal before this Court which is still pending for final disposal. The petitioner is presently confined in District Jail, Karnal. He approached the jail authorities for grant of parole for a period of one month. It was mentioned in the application that his mother was operated upon 4/5 years back and her hip replacement was done at PGI, Chandigarh. As there was persistent pain, she was again referred to PGI for further consultation. Only the wife and small children of the petitioner are there and no other elder member in the family is there to attend the ailing mother. Petitioner was orally told by the Jail Superintendent that it was a special type of leave and parole cannot be granted prior to expiry of one year of conviction as per Jail Manual.

However, no order was passed. The petitioner, thereafter, approached this Court by way of filing the present petition on the ground that he is entitled for parole for a period of four weeks in view of Section 3(1)(a) of the Haryana Good Conduct Prisoners (temporary release) Act 1988 (hereinafter referred to as 'the Act') for treatment of his mother.

Learned counsel for the petitioner submits that the conduct of the petitioner is satisfactory inside the jail and no complaint was ever made against him.

In response to notice of motion, the reply has been filed in the Court and the same is already on record.

Learned State counsel has seriously opposed the submissions made by learned counsel for the petitioner. He also submits that the mother of the petitioner is not stated to be seriously ill and as such, the petitioner is not entitled for parole. As per provisions of Section 3(1)(a) of the Act, the parole can be granted to the convict in case, any family member had died or is seriously ill or prisoner himself is seriously ill but none of the conditions is there. Learned State counsel also submits that the petitioner has not completed one year of imprisonment after conviction as he was sentenced on 29.04.2017.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The facts regarding conviction; custody period as well as pendency of the appeal before this Court are not disputed.

The request of parole of the petitioner has been rejected only on the ground that his mother is not seriously ill and he has not completed one year of sentence after conviction. It has not been disputed by learned

State counsel that there is no other male member in the family of the petitioner to look after his wife, children and old aged parents. Petitioner was the only bread earner in the family. The mother of the petitioner is 75 years of age and his father is also about 82 years of age.

As per case of the petitioner, his mother was operated upon 4/5 years back and her hip replacement was done at PGI, Chandigarh. Subsequently, some complications arose and she was again referred to PGI, Chandigarh. Petitioner was earlier granted emergency parole when his wife was blessed with a son and said concession was never misused by him as he had surrendered before the jail authorities well in time. Not only the conduct of the petitioner has been good inside the jail but he is not involved in any other case. The concerned *Gram Panchayat* has also given a certificate stating therein that the petitioner is personally known to it and his mother is seriously ill. It has also been mentioned that the mother of the petitioner is to be operated upon once again and the petitioner is the head of the family.

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 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.”

In view of the facts as well as law position as mentioned above and the observations made in the above said judgment, the present petition is allowed and the petitioner is directed to be released on parole for a period of two weeks. On expiry of period of parole of two weeks from the date of his release, 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 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.

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

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

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

28.03.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No