

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

CWP No.7071 of 2018

Date of Decision: 28.03.2018

Satish

....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 27.05.2016 for offence punishable under Sections 323/302 IPC and was sentenced to undergo rigorous imprisonment for life with fine.

Aggrieved by said judgment of the trial Court, the petitioner filed a criminal appeal before this Court, which is pending for final disposal. Petitioner was in custody during trial and even after conviction also, he is in custody. The wife of the petitioner is no more. He is having three children. One daughter, namely, Payal (aged about 13 years), son Shivam (aged about 11 years) and daughter Palak (aged about 8 years). The children are residing with the elder brother of the petitioner. Petitioner filed an application for parole for admission of his children but the same was rejected by the Commissioner, Karnal Division, Karnal on the ground that he may commit serious offence.

Learned counsel for the petitioner submits that a certificate has also been issued by the *Gram Panchayat* that there is no apprehension of threat. Only on the basis of apprehension, the claim of the petitioner has been rejected. There is no other elder member in the family to make arrangement for admission of the children, who are of school going age. Not only for the purpose of admission but the presence of the petitioner is required to make other arrangements such as books, uniform and amount for the purpose of their admission. Learned counsel also submits that there is no complaint against the petitioner by the jail authorities and he never misused the concession of bail during trial or thereafter.

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

Learned State counsel submits that the custody period of the petitioner is very less as after conviction, he has undergone only one year ten months and one day upto 27.03.2018. Learned State counsel also submits that the children of the petitioner are residing with the brother of the petitioner and he is taking care for upbringing along with their education and there is no necessity that the petitioner should also be present at the time of admission. Learned State counsel also submits that there is a possibility of committing serious offence and a detailed speaking order was passed by the learned Commissioner and reasons have also been mentioned.

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

As per provisions of Sections 3(1)(a) and 3(2)(b) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act of

2014 (hereinafter referred to as 'the Act, 2014), a convict may be released temporarily for a period for the purpose of marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter. The period of release is to be determined by the State Government. The claim of the petitioner has been rejected only on the ground that he may commit serious offence, in case, he is released on parole. As per relevant provisions, even the hardcore criminal may be released on temporary basis. Simply by saying that the petitioner is likely to commit serious offence, in case, he is released on parole, is not sufficient. 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. No such circumstances have been narrated either in the reply or in the arguments. Simply an apprehension has been made which is without any sufficient reason. No other case has been registered against the petitioner and it has not been mentioned that he was ever convicted earlier also. Even it has not been brought to the notice of this Court that the petitioner had ever misused the concession of bail during trial or after conviction. The concerned *Gram Panchayat* has also certified regarding the age of the children; their classes and the factum of their admission. The wife of the petitioner had already died and children are residing with the brother of the petitioner. Some necessary arrangements are to be made like uniform; books and other items as per requirement of the children. Even in case of small children, some motivational talks are also necessary which are to be given at the time of admission of the children. There is no complaint by the jail authorities and the apprehension has been made without any basis.

The parole and furlough provide for a humanistic approach

towards those persons who are lodged in jails. The observation made by Hon'ble the Apex Court in ***Asfaq vs State of Rajasthan and others 2017 AIR(SC) 4986*** is relevant, which is reproduced as under :-

“ 15. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provision is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizen of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure, when offender revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.”

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, I am of the considered view that the present petition deserves to be allowed and the petitioner is entitled for parole for a period of two weeks for the purpose of admission of his children.

Accordingly, this petition is allowed and the petitioner is directed to be released on parole for a period of two weeks for the purpose of admission of children, subject to satisfaction of the jail authorities. Petitioner is directed to surrender before the Jail Authorities after expiry of period of two weeks. The petitioner be allowed parole from the date from which he wants to proceed on parole during the period which is relevant for

the purpose of admission. 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