

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

CWP No.7276 of 2018

Date of Decision: 30.04.2018

Heera Lal

....Petitioner

Versus

The State of Punjab and others

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. A.S. Trikha, Advocate
for the petitioner.

Ms. Anu Chatrath, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a direction to the respondents to grant parole to the petitioner for a period of six weeks to meet his family members, who are residing in the State of Uttar Pardesh.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was convicted in case FIR No.124 dated 01.12.2008 for an offence under Section 302/34 IPC registered at Police Station Maur, District Bathinda and was sentenced to life imprisonment by the trial Court. Thereafter, the petitioner filed a criminal appeal, which is pending after admission. Petitioner submitted an application to the Jail Superintendent for grant of parole for a period of six weeks to meet his family members and for repair of his house in view of provisions of Section 6 of the Punjab Parole Amendment Act, 2015. Petitioner also submitted a *panchayat nama*, wherein, it was mentioned that there was no danger to peace and security of the State, in case, the petitioner is released on parole.

The claim of the petitioner was not considered. Thereafter, the petitioner had approached this Court on the ground that he is entitled for parole but still his claim has not been considered.

Learned counsel for the petitioner submits that there is no apprehension of breach of peace, in case, the petitioner is released on parole. Even his case has been recommended by the *Sarpanch* of the concerned village. In the *panchayat nama*, it has been mentioned that the house of the petitioner is not in good condition which may cause loss to the family members and property as well. At the end, learned counsel for the petitioner submits that the claim of the petitioner was sent by the Jail Superintendent to the District Magistrate, Bathinda and thereafter, the report of the police was sought. The claim of the petitioner was not recommended by the Office of Senior Superintendent of Police, Behrich (U.P) as is clear from the report annexed with the reply.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the case of the petitioner was sent to Superintendent of Police to obtain the police verification report. It was sent by the Senior Superintendent of Police, Bathinda to Superintendent of Police, Behrich (U.P), where, the petitioner was residing before the date of conviction. His case has not been recommended. In the report sent by Superintendent of Police, Behrich, it has been mentioned that the petitioner is having three brothers. It has further been mentioned therein that there is a possibility that the petitioner may misuse the concession of parole.

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

Facts relating to conviction and filing of appeal are not disputed. The claim of the petitioner has been rejected by mentioning that there is no marriage in the family of the petitioner and he may misuse the concession of parole. As per claim of the petitioner, the parole was sought on the ground that he wanted to meet his family members and to repair the house. A *panchayat nama* was also sent by the *Gram Panchayat* duly signed by the *Sarpanch*. In said *panchayat nama*, it has been mentioned that the house of the petitioner is not in a good condition and there is no likelihood that he may abscond. It appears that the claim of the petitioner has wrongly been rejected without any application of mind, whereas, there was no request to attend the marriage. It has wrongly been mentioned that the petitioner may abscond, in case, he is released on parole and there is no marriage. The casual approach of the respondents shows that the concerned authority has not taken into consideration the contents of the application and the claim of the petitioner has been rejected by mentioning wrong reasons. The benefit of parole cannot be granted to the persons, who are hardcore criminals but in the present case, the petitioner is not a hardcore criminal as it has not been brought to the notice of this Court that he is involved in any serious offence. Sections 3(1)(b) and 3(2)(b) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 are relevant for deciding the issue involved in the present case, which are reproduced as under :-

“3(1) The State Government may, in consultation with the District Magistrate 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 the prisoner'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 is a hardcore prisoner. The hardcore prisoner has been defined under the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, which is reproduced as under :-

“2. (aa) ‘*hardcore prisoner*’ means a person confined in prison under a sentence of imprisonment, who has been convicted of -

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012; and

(ii) for clause (b), the following clause shall be substituted, namely :-

“(b) “member of prisoner's family” means the husband, wife, son, daughter, father, mother, brother, sister, grand-father, grand-mother, grand-son, grand-daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, father's brother, father's sister, mother's brother or mother's sister of

the prisoner.”

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. 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 the present case, all these factors have not been taken into consideration by the competent authority and there is a complete violation of the dictate of law in respect of administrative decision.

Accordingly, the present petition is allowed and the petitioner is directed to be released on parole for a period of two weeks from the date of his release to meet his family members and to repair his house. 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 certain terms and conditions, which are as under :-

- (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.

(DAYA CHAUDHARY)
JUDGE

30.04.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No