

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

CWP No.8160 of 2018

Date of Decision: 17.04.2018

Prince Pal Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Mandeep Singh Khillan, Advocate
for the petitioner.

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

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for grant of emergency parole for a period of eight weeks as per provisions of Section 3(1) sub-section (a) & (c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 in case FIR No.794 dated 14.11.2014 registered under Section 18 of the **Narcotic Drugs and Psychotropic Substances Act, 1985** at Police Station Sadar, District Karnal.

The petitioner is undergoing sentence of ten years as he was convicted by the Special Court (NDPS cases), Karnal vide judgment dated 09.01.2017.

Aggrieved by said judgment of conviction and order of sentence, the petitioner filed a criminal appeal which is pending after admission.

The petitioner has approached this Court for grant of *parole* to look after his ailing father, who is suffering from various ailments and is

more than 60 years of age. The father of the petitioner has to be operated because of tumor and he is taking treatment from Kalpana Chawla Government Medical College Hospital, Karnal. A request was made by the petitioner to the respondent authorities for grant of *parole* but the same was not considered. Thereafter, the petitioner had approached this Court by way of filing CRWP No.1189 of 2017, which was disposed of vide order dated 22.11.2017 with a direction to respondent No.2 to consider his representation and pass a detailed speaking order. Said representation was decided vide order dated 30.11.2017 but the claim of the petitioner has been rejected on the ground that he is a hardcore criminal and is not entitled for parole as he has undergone only three years of sentence.

Learned counsel for the petitioner submits that the conduct of the petitioner, inside the jail, has been found to be good and he is not involved in any jail offence but still, he has not been granted the benefit of *parole*. Learned counsel also submits that the petitioner never misused the concession of bail during trial and he has not committed any offence while remaining in custody. Learned counsel further submits that there is no other male person (other than the father of the petitioner) in the family except petitioner to look after his ailing father and his immediate treatment is required. Learned counsel also submits that there is no apprehension of breach of peace, in case, the petitioner is released on *parole*.

In response to notice of motion, reply has been filed by the respondents which is taken on record.

Learned State counsel submits that the petitioner cannot claim *parole* as a matter of right as it is the only concession which is given for good conduct and on fulfilling certain conditions as provided in the Act. He

further submits that the petitioner is involved in a serious case of NDPS and he was awarded sentence of ten years with a fine of Rs.one lac. Learned State counsel further submits that the petitioner falls under the category of hardcore criminal and he has undergone only 14 months of actual sentence after conviction. The petitioner has completed 03 years 01 month and 23 days as on 05.03.2018 and is not eligible for parole as five years of imprisonment is required as per sub-section 2 of Section 5A of the Parole Act.

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

The facts of the case relating to conviction and order of sentence and the custody period are not disputed. It has also not been disputed that the father of the petitioner has to be operated and he requires immediate medical treatment because of tumor. The claim of the petitioner has been rejected only on the ground that he is a hardcore criminal and has not completed five years of sentence.

“Hardcore prisoner’ has been defined under Section 2 clause (aa)(i)(13) of the Parole Act, which is reproduced as under :-

“(aa) “hardcore prisoner” means a person,
(i) who has been convicted of -
**(13) Offence under Section 17(c) or 18(b) of
Narcotic Drugs and Psychotropic Substances Act,
1985 (Central Act 61 of 1985)”**

As per provisions of Section 5(A)(2) of the Parole Act, a convicted hardcore prisoner may be entitled for temporary release or furlough only in case, he has completed five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail. The

petitioner has completed more than three years and two months of custody, which is less than five years.

The claim of the petitioner has been rejected only on the ground that he is a hardcore criminal and is involved in a serious offence and has not completed five years of actual sentence. 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 is a hardcore prisoner. 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. 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 considered by the competent authority and as such, it 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 three weeks from the date of his release from jail after getting certified copy of the order. On the expiry of period of parole of three weeks, the petitioner is directed to surrender before the jail authorities.

(DAYA CHAUDHARY)
JUDGE

17.04.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No