

C.W.P. No. 9072 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9072 of 2018

DATE OF DECISION:24.04.2018

Sagan Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. NS Behgal, Advocate
for the petitioner.

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

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of mandamus directing the respondents to release the petitioner on parole for a period of two months for the purpose of agriculture i.e. for harvesting the wheat crop and also for plantation of paddy crop.

As per case of the petitioner, he was convicted in case FIR No. 183 dated 4.5.2010 registered under Section 18 of NDPS Act at Police Station Sadar Thanesar, Kuruskehtra and was sentenced to undergo ten years imprisonment vide judgment dated 17.3.2012 passed by Additional Sessions Judge, Kurukshetra. Said judgment of conviction and order of

sentence was challenged before this Court by way of filing criminal appeal, which is still pending. While undergoing the sentence, on 17.2.2018, the petitioner moved an application before the Superintendent of Police Jail, Rohtak for grant of parole for agriculture purpose, which is still pending and in spite of passing of more than two months, no action has been taken thereupon so far.

Learned counsel for the petitioner contends that the wheat crop is standing over the agriculture land of the petitioner and his presence is required not only for harvesting but for plantation of paddy crop. Learned counsel further contends that the petitioner never misused any concession of bail/parole. Learned counsel also contends that petitioner is the only bread earner of the family and there is no other member to look after the family and agriculture activities. The children of the petitioner are minor and they are not in a position to take care of the agriculture activities.

In response to notice of motion, reply on behalf of respondent-State has been filed in Court today and the same is taken on record.

Learned State counsel on the basis of reply submits that many cases are pending against the petitioner, details of which are given in para No.3 of the reply. The petitioner has undergone actual custody of approximately two years and ten months and he falls in the category of hard core prisoner and is not entitled to be released on parole before completion of five years. Learned State counsel further submits that a mobile was recovered from the possession of the petitioner and accordingly FIR under Section 465 IPC and 42 of Prisons Act was registered against him. Learned State counsel also submits that the petitioner is having brother, who is looking after the agriculture work. The petitioner is on bail in all the cases

except one and in case parole is granted to him, he may abscond.

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

The facts relating to conviction and sentence and also the rejection of claim of the petitioner are not disputed. The claim of the petitioner has been rejected only on the ground that he is hard core criminal and is involved in number of cases. Sections 3(1)(b) and 3(2)(b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as 'the Act') 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 two weeks for the purpose of agriculture subject to satisfaction of the jail authorities. 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 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 date after the date when the petitioner is released from jail.

April 24, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes