

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.9710 of 2018
Date of Decision:25.07.2018

Sukhvinder

..... Petitioner

Vs.

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Ms.Sarla Chaudhary, Advocate,
for the petitioner.

Ms.Safia Gupta, AAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioner is lodged in District Jail, Yamunanagar, while suffering sentence for life, having been convicted in a case registered vide FIR No.360 dated 10.12.2004 under Sections 302, 307 & 34 of the Indian Penal Code, 1860 and Sections 25/54/59 of the Arms Act, 1959 at Police Station, Mahindergarh. The petitioner applied for parole to the Superintendent of Jail, Yamunanagar under Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the Act'] for agricultural purposes. His request has been rejected by the Superintendent of Jail, Yamunanagar vide his order dated 3.3.2018 on the ground that at the time when he was lodged in Gurugram Jail, he was released on parole on 13.9.2017 and was directed to surrender before the jail authorities on 26.10.2017 but during the period of his parole, a case vide FIR No.580 dated 25.10.2017 under Sections 323, 506 & 34 of the Indian Penal

Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station, Shivaji Colony, Rohtak was registered against him and since he has not maintained the good conduct during the period of his parole, therefore, he was not allowed to be released.

After the notice was issued, the respondents have filed their reply in which the same stand has been taken on the basis of which the request for parole of the petitioner has been turned down by the Superintendent of Jail, Yamunanagar but besides that a list of cases in which the petitioner has been convicted and acquitted is also attached. According to the said list, the petitioner has been convicted in FIR No.185/1999 for three years Rigorous Imprisonment, in FIR No.291/1997 for 12 years Rigorous Imprisonment and in FIR Nos.101/2004, 259/2006, 248/2003 and 371/1998 registered at Police Station Sadar Rohtak, City Sonapat, Meham, Rohtak and Jhajjar respectively, he has been sentenced for the period undergone.

Learned counsel for the petitioner has argued that the application of the petitioner could not have been rejected by respondent No.3 as the power vests with the Divisional Commissioner. In this regard, she has referred to Rule 3 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 [for short 'the Rules'], which read as under: -

“3(1) A prisoner desirous of seeking temporary release under Section 3 or Section 4 of the Act, shall make an application in form A-1 of form A-2, as the case may be, to

the Superintendent of Jail. An adult member of the prisoner's family may also make such an application.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate who shall forward the case with his recommendations to the Director General for grant of parole or otherwise. The releasing authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form-B ordering the temporary release of the prisoner specifying therein-

- (i) the period of release;*
- (ii) the place or places which the prisoner is allowed to visit and*
- (iii) the amount of surety bond.”*

Learned counsel for the respondents could not deny this fact that the Superintendent of Jail in the normal circumstances, if the application of parole is filed, has to make a report to the District Magistrate, who would further forward the case with his recommendations and the ultimate decision is to be taken by the Divisional Commissioner. It is, however, submitted that the Superintendent of Jail, may pass an order to grant or refuse the parole in case where emergency parole is applied.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that there is an error on the part of respondent No.3 in rejecting the application for seeking parole by the petitioner in normal circumstance and not in emergency as the power to accept or reject the request made for parole is conferred upon the Divisional Commissioner in terms of Rule 3 of the Rules.

Thus, the writ petition is hereby allowed and the impugned order passed by the Superintendent Jail, Yamunanagar is hereby set aside with a direction that he would make a report within the period prescribed as per the instructions issued by Director General, Prison vide Memo No.43762/19 dated 15.12.2016 within 5 days to the District Magistrate, who would make his recommendations to the Divisional Commissioner on the basis of the said report and it is for the Divisional Commissioner to decide as to whether the recommendations, which may be in favour of or against the convict/prisoner, has to be accepted or not.

25.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No