

C.W.P. No. 9738 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9738 of 2018

DATE OF DECISION:27.04.2018

Sachin @ Lucky

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Suneet Kumar, Advocate
for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

DAYA CHAUDHARY, J.

The petitioner is convict in case FIR No. 02 dated 4.1.2016 registered under Section 4 of POCSO Act at Police Station Saha, District Ambala and sentenced to undergo rigorous imprisonment for a period of seven years with fine with default clause. Said judgment of conviction and order of sentence was challenged before this Court by way of filing an appeal, which is pending. The petitioner made a request to respondent No.3 to attend the marriage of his brother, which is scheduled for 29.4.2018 but it was declined. The petitioner has also annexed a copy of the marriage card and ration card showing the relationship of the petitioner with Ankush. Thereafter, the petitioner has approached this Court for grant of parole to attend the marriage of his brother.

Learned counsel for the petitioner contends that the petitioner is ready to abide by all the terms and conditions to be imposed by this Court and undertakes to surrender before the jail authorities as per direction issued by this Court. He also undertakes not to misuse the concession of parole.

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

Learned State counsel on the basis of reply submits that the petitioner falls in the category of 'hard core prisoner' and he is not entitled for parole. Learned State counsel further submits that the petitioner has not completed five years of imprisonment after conviction including period of two years during trial. Learned State counsel also submits that the factum of marriage was verified from the SHO concerned and it has been admitted that marriage is scheduled for 29.4.2018. The District Magistrate, Ambala has also verified this fact through Naib Tehsildar. The local residents of the village, Bihta are also having no objection in releasing the petitioner temporarily as is clear from Annexures R-3 and R-4.

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. 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) (b) 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, the marriage of brother of the petitioner is scheduled for 29.4.2018. The petitioner has undergone custody of approximately one year and seven months. As per provisions of Section 5 A of the Act, 1988, the convict, who is hard core prisoner is entitled for temporary release or furlough in case he has completed five years of imprisonment and has not been awarded any major penalty by the Superintendent of Jail. Although, the petitioner has not completed five years of imprisonment but he cannot be termed as hard core criminal as no other case is pending against him.

Accordingly, the petition is allowed and the petitioner is granted temporary parole while in police custody for a period of two days. The Superintendent, District Jail, Ambala is directed to make all necessary arrangements for taking the petitioner in police custody.

Copy of this order be given to learned counsel for the parties
under signatures of the Special Secretary of this Court.

April 27, 2018	(DAYA CHAUDHARY)
pooja	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes