

CWP-1386-2019

[1]

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

CWP No.1386 of 2019 (O&M)

Date of decision: February 25, 2019

Sandeep

...Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavata, AAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent, District Prison, Gurugram dated 29.10.2018 (Annexure P-1) whereby the application of the petitioner for release on agriculture parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing life imprisonment in case FIR No.156 dated 10.05.2013 under Sections 354, 376D, 506 IPC and Sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012, Police Station Pataudi, District Gurugram after his conviction by the Trial Court. His appeal bearing No.CRA-D-611-DB-2014 is pending in this Court.

Sunita, the wife of the petitioner submitted an application dated 10.10.2018 to the Superintendent, District Prison, Gurugram for grant of agriculture parole to the petitioner. Since, no decision was taken on the said

representation, CWP No.28374 of 2018 was filed in this court. Vide order dated 2.11.2018, the said writ petition was disposed of with a direction to the Superintendent, Bhondsi Jail, District Gurugram to decide the representation dated 10.10.2018 moved by the wife of the petitioner within three days of the receipt of the said order. Thereafter, the impugned order has been passed declining agriculture parole to the petitioner.

The impugned order states that as per the opinion/guidelines from the Director General of Prisons, Haryana where land is held on 'patta', the convict is not eligible for agriculture parole. On this ground, the application of the petitioner for agriculture parole was not initiated.

Reply has been filed by way of affidavit of Jai Kishan Chhillar, Superintendent, District Jail, Gurugram stating that as per the Director General of Prisons, Haryana letter No.34257 DGP/Jail/2018/G.1 dated 25.07.2018 (Annexure R-3), the petitioner is not eligible for agriculture parole on possession of land on 'patta'. It is also mentioned that the petitioner has already availed 04 weeks House Repair Parole w.e.f. 06.08.2018 to 04.09.2018.

Learned counsel for the petitioner has argued that the ground for rejection is baseless. He has relied on CWP No.18495 of 2018 titled 'Anil Solanki vs. State of Haryana and others' decided on 10.09.2018 and CWP No.28238 of 2018 titled 'Ram Bilas vs. State of Haryana and others' decided on 07.12.2018.

In **Anil Solanki's** case (supra), similar objection to deny parole was rejected by this Court while observing :-

“In the reply, the respondents have averred that the petitioner did not qualify to be released on parole for agricultural

purpose because the land is on lease and not owned by him. In this regard, a reference is made to Section 3(1)(c) of the Act, which read as under: -

“the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father’s undivided land actually in possession of the prisoner.”

Learned counsel for the petitioner has relied upon two decisions of this Court rendered in the cases of “Kashmir @ Motu Vs. State of Haryana and another” 2001(1) RCR (Criminal) 616 of Haryana and another” 2001(1) RCR (Criminal) 616 and “Baldev Singh Vs. State of Haryana” State of Haryana” State of Haryana” 2000(2) RCR (Criminal) 144.

No precedent to the contrary has been cited by the counsel for the respondents.

I have heard learned counsel for the parties and perused the record.

It has been held in the cases of Kashmir @ Motu (Supra) and Baldev Singh (Supra) that merely the fact that the land is not owned but is in possession of the petitioner on lease would not be a reason to deny parole for agricultural purpose.”

In **Ram Bilas's** case, it was observed while allowing parole to the petitioner therein:

“Now, the question would arise as to whether for the land taken on Patta, agricultural parole can be declined and the order of the Superintendent District Prison, Gurugram dated 16/20.10.2018 deciding not to initiate parole of the said convict is sustainable in the eyes of law?

For this purpose, one has to go through Section 3(1)(C) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which is reproduced as under:-

3. (i) *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) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

*(b) the marriage of prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation **on his land** or his father's undivided land actually in possession of the prisoner;"*

The language of the aforesaid section shows that a prisoner can be released on parole for agricultural operations 'of his land'.

Now, the question would arise as to whether 'his land' means only the land owned by the petitioner or it includes the land on lease with him?

The purpose of the said agricultural parole is that the petitioner may cultivate the land, which is in his possession. Therefore, in my opinion, giving restrictive meaning that such parole can be allowed only for the purpose of the land which is actually owned by the convict or his family members will frustrate the very object of the said section. The term, 'his land' includes the land in his possession through it may not be owned by him. Even if, the convict has taken land on lease, he is entitled to cultivate the same. Therefore, agricultural parole for the land taken on lease by the convict or his family members can be allowed.

It being so, the impugned order passed by the Superintendent District Prison, Gurugram dated 16/20.10.2018 is set aside. He is directed to initiate the parole case of the petitioner and send the same to the concerned authorities for taking decision. The

Superintendent shall pass necessary orders within five days from the date of receipt of a certified copy of this order and thereafter, the concerned authority shall pass order within the time frame fixed by the instructions of the Government of Haryana.

Petition is accordingly allowed.”

In view of above, the objection of the respondents cannot sustain.

Accordingly, this petition is allowed. The impugned order is set aside.

The respondents are directed to release the petitioner on parole for a period of six weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. The petitioner shall surrender before the Jail authorities on the expiry of six weeks of his release.

February 25, 2019

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No