

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

CWP No.1989 of 2019
Date of decision: March 20, 2019

Vijay Pal @ Goldy ...Petitioner

Versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ravinder Bangar Advocate
for the petitioner.

Mr. Ramesh K. Ambavta AAG, Haryana

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition praying for directions that he be released on emergency parole for three weeks on account of the death of his father on 11.03.2019. He has also prayed for quashing the order dated 22.12.2018 (Annexure P-1), whereby, his application for parole has been dismissed.

The petitioner has been convicted for an offence u/s 302, 201, 364-A read with section 34 IPC by the Additional Sessions Judge, Yamunanagar at Jagadhari vide judgment and order dated 13.01.2014. He has been sentenced as under:

<i>Name of Convict</i>	<i>Offence U/s</i>	<i>Imprisonment RI</i>	<i>Fine</i>	<i>Sentence in default of payment of fine. RI</i>
<i>Nitin Jaiswal and Vijay Pal @ Goldy</i>	<i>201 IPC</i>	<i>7 years each</i>	<i>Rs.10,000/- each</i>	<i>06 months</i>

<i>Nitin Jaiswal and Vijay Pal</i>	<i>302/34 IPC</i>	<i>Life imprisonment each.</i>	<i>Rs.10,000/- each.</i>	<i>06 months</i>
<i>Nitin Jaiswal and Vijay Pal</i>	<i>364-A/34 IPC</i>	<i>Life imprisonment each</i>	<i>Rs.10,000/-</i>	<i>06 months</i>

The order of sentence further reads:

“It is further ordered that the accused shall not be released till their last breath i.e., natural death”

The petitioner had earlier prayed for grant of three weeks furlough and for quashing the order dated 22.12.2018 (Annexure P-1) of the Superintendent Jail, District Jail, Yamunanagar, whereby, his application for furlough had not been initiated in view of him being sentenced to life imprisonment and not to be released till his last breath.

During the pendency of the petition, the father of the petitioner died on 11.03.2019. He applied for emergency parole for three weeks. He was released on 12.03.2019 to enable him to attend the cremation of his father. No order was passed on his application for release. Thereafter, the petitioner filed the amended petition praying to be released on emergency parole.

It is stated that the petitioner is the only son and has two sisters. He has to perform various ceremonies in connection with his father's death. The Rasam Pagri is scheduled to be performed on 25.03.2019. It is prayed that he be released for three weeks.

In the reply filed on behalf of the respondents, it has been stated that the petitioner falls in the 'hardcore category' as defined in Section 2(aa)(i)(3) of the Haryana Good Conduct Prisoner's (Temporary Release) Act as amended in 2013.

The petitioner had earlier filed CWP No.32525 of 2018 for grant of furlough for three weeks. The said petition was disposed of vide order dated 14.12.2018 with a direction to the Superintendent, District Jail, Yamunanagar to take a decision on his application within five days. In compliance therewith, the Superintendent Jail, District Jail, Yamunanagar passed order dated 22.12.2018 stating that the parole case of the petitioner cannot be initiated as he has been convicted and sentenced to undergo life imprisonment and further ordered not to be released till his last breath. It has been stated that a clarification/opinion regarding release of prisoners who have been ordered not to be released till their last breath by the sentencing court, was sought. The Director General of Prisons in his letter dated 22.05.2017 (Annexure R-1) opined as under:

“Subject :- Regarding clarification for grant of parole to the convicts sentenced for life imprisonment i.e. shall not be released till their natural death.

Reference the your office letter No.2672 dated 30.04.2017, on the subject cited above.

2. You have requested to Head Office for the clarification for grant of parole to convict Hanuman s/o Shiv Nath, Jaspal @ Tenny @ Tony s/o Ajit Singh, Ramesh Kumar @ Kaka s/o Nathi Ram and Bharat Walia s/o Rameshwar, while the Ld. Court of Sh.Rajneesh Bansal, Addl. Sessions Judge, Yamunanagar at Jagadhri clearly mentioned that all the convicts should not be released till their natural death.

The matter has been considered carefully in Head Office and found that the above said convicts are not eligible to grant any parole/furlough at this stage as per the judgment of the Ld. trial Court, in which they could not be released from the

jail till their natural death.”

Apparently, the only objection to the grant of emergency parole to the petitioner on account of his father's death is the order of the sentencing Court to the effect that : *“It is further ordered that the accused shall not be released till their last breath i.e., natural death”*

A somewhat similar question as to whether a prisoner who has been sentenced to imprisonment in prison for the rest of his life with a direction that he shall not be entitled to commutation or premature release can be released on parole was considered by Hon'ble Supreme Court in ***Krishan Lal v. State of Rajasthan, (2013) 11 SCC 395.***

In that case, the trial court had convicted all the accused persons except one for the offences under Sections 302, 307, 148, 450 read with Sections 149 and 120-B of the Penal Code, 1860 and sentenced them to death. The High Court upheld the conviction of all the convicted persons but commuted the death sentence to imprisonment for life. Hon'ble the Supreme Court confirmed the conviction and sentence awarded to the accused by the High Court and held that the imprisonment for life awarded to the appellant therein (Krishan Lal) shall be the imprisonment in prison for the rest of his life and he shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, 1973, The Prisoners Act, The Jail Manual or any other statute and Rules made for the purpose of grant of commutation and remissions.

The point for consideration before the Supreme Court was whether the appellant was entitled to be released on parole in the light of the sentence awarded.

The Supreme Court referred to the circumstances in which the order came to to be passed. The Senior Counsel for the appellant Krishan Lal had submitted that if he were sentenced to life imprisonment he would never claim his premature release or commutation of his sentence on any ground. The statement was recorded. The Counsel for the complainant had opposed the prayer contending that if accused Krishan Lal was not awarded death sentence, he was likely to eliminate the remaining family members of Bhagwan Ram, as is evident from his past conduct and behaviour. He further submitted that in order to protect the surviving family members of Bhagwan Ram, it was necessary to at least deprive Krishan Lal - the appellant of his life.

In the light of these submissions, the Supreme Court had passed the following order:

“...However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal (A-1), we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the rules made for the purposes of grant of commutation and remissions.”

Hon'ble Supreme Court noted that the directions made it clear that appellant-Krishan Lal has to serve the imprisonment throughout his life in prison and was not entitled to any commutation or premature release under the Code of Criminal Procedure or any other Act including the

Prisoners Act, the Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions.

It was also noticed that the sentence was silent on his right or entitlement of parole.

The Court considered that as per 'Rajasthan Prisoners' Release on Parole Rules, 1958' a prisoner sentenced to imprisonment for not less than one year was permitted to make an application for release on parole before the Prisoners' Parole Advisory Committee. The procedures to be followed in considering such applications and the time for which parole was to be allowed was specified. But in view of the commutation of death sentence into life imprisonment and specific conditions imposed foregoing commutation or premature release under any statute or rules and considering the apprehension expressed by the complainant it was held that the appellant shall not be entitled for regular parole in terms of Rule 9 of the said Rules. However, in emergent cases involving humanitarian considerations, the authority concerned was free to pass appropriate orders in terms of Rule 10-A(i) of the Rules by imposing stringent conditions.

It was observed :

“15. Though the Rajasthan Prisoners' Release on Parole Rules, 1958 enable the appellant to apply for parole before the Advisory Committee, we are of the view that in view of the commutation of death sentence into life imprisonment and specific conditions imposed foregoing commutation or premature release under any statute or rules and considering the apprehension expressed by the complainant Respondent 2 herein, we hold that henceforth the appellant shall not be

entitled for regular parole in terms of Rule 9 of the said Rules. However, if any contingency arises, the same may be considered by the Advisory Committee in terms of Rule 10-A(i) of the said Rules which reads as under:

“10-A. (i) Notwithstanding the provisions of Rules 3, 4, 5, 9 and 10 in emergent cases, involving humanitarian consideration viz.: (1) critical condition on account of illness of any close relations i.e. father, mother, wife, husband, children, brother or unmarried sister; (2) death of any such close relation; (3) serious damage to life or property from any natural calamity; and (4) marriage of a prisoner, his/her son or daughter or his/her brothers/sisters in case his/her parents are not alive.

A prisoner may be released on parole for a period not exceeding 7 days by the Superintendent of the Jail and for a period not exceeding 15 days by the Inspector General of Prisons (District Magistrate) on such terms and conditions as they may, consider necessary to impose for the security of the prisoner including a guarantee for his return to the jail, acceptance or execution whereof would be a condition precedent to the release of such a prisoner on parole.”

16. In view of the order of this Court dated 29-3-2001 in Subash Chander, we reiterate that the appellant is not entitled to normal parole in terms of Rule 9, however, in emergent cases involving humanitarian considerations, the authority concerned is free to pass appropriate orders in terms of Rule 10-A(i) of the Rules. Even while considering such application, the authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family

and also pass appropriate orders giving them necessary protection. It is also made clear that if the authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application.”

In the present case, the sentence awarded to the petitioner is not yet final. His appeal is pending consideration before this Court.

With the sentence as it stands, as per the decision of Hon'ble Supreme Court, the petitioner would in any case be entitled to be released on emergency parole on account of his father's death as per Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Act.

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 three 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 three weeks of his release.

A copy of this order be supplied to counsel for the petitioner under the signatures of the Special Secretary of the Bench.

March 20, 2019

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No