

CWP-3311-2019

[1]

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

**CWP No.3311 of 2019 (O&M)
Date of decision: April 12, 2019**

Arun

...Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Mr. Sandeep Vashisht, DAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Divisional Commissioner, Hisar dated 14.01.2019 (Annexure P-4) whereby the application for release of the petitioner on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing imprisonment for life in case FIR No.215 dated 22.06.2010 under Sections 302/307 IPC and Section 25 of the Arms Act, Police Station Bahadurgarh, District Jhajjar after his conviction by the Trial Court.

The petitioner submitted an application to the Superintendent, Central Jail-1, Hisar for his release on parole for conjugal visit and procreation. It was rejected vide order dated 26.09.2018 on the ground that parole cannot be granted during pendency of other cases. He filed CWP No.26437 of 2018, which was disposed of on 17.10.2018 on the statement of learned State Counsel that fresh

order shall be passed by the competent authority after considering the plea of the

petitioner. Thereafter his request for parole has been rejected vide the impugned order dated 10.01.2019 (Annexure P-4) passed by Divisional Commissioner, Hisar.

In the reply it is stated that the petitioner is also facing trial in two cases. FIR No.55 dated 19.04.2016 under MCOC Act, Police Crime Branch New Delhi before Additional Sessions, Rohini Courts, Delhi, wherein, he has not been granted bail and FIR No.371 dated 21.12.2013 under Section 42 of the Prisons Act, Police Station Bhondsi, wherein, he has been granted bail.

In the reply details of cases registered against the petitioner are given. In eight cases he has been acquitted by the Trial Courts. In one, he has been sentenced to the period already undergone by him. Regarding the request for parole it is stated that there is no provision in the Act to grant parole to a convict for the dynasty increase or for conjugal visits.

Learned counsel for the petitioner has contended that the petitioner is a married young man and the only son of his parents. His father is ex-army officer. The petitioner is in custody for the last about 08 years and 08 months. There is no issue out of his marriage as the petitioner is behind bars. The wife of the petitioner is not keeping good health due to stress/loneliness, leading to other health issues. He has relied upon **Jasvir Singh and another vs. State of Punjab and others, 2015 RCR(Criminal) 509** to contend that right of a convict to conjugal visits and procreation is a component of the right to live with dignity and part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. He also stated that the petitioner would apply for bail in FIR No.55 dated 19.04.2016 wherein he has not been granted bail.

the petitioner has not been granted bail in all cases pending against him, therefore, his case for parole cannot be considered.

Heard Ld. Counsel for the parties.

The impugned order declining parole to the petitioner cannot sustain.

The issue regarding the right of a convict to have conjugal rights was discussed in detail in **Jasvir Singh's case**. The right was recognized. The Court then considered the provisions of The Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962 and held that the parole for conjugal visits and procreation could be considered under Section 3(1) (d) “any other sufficient cause”. There is a similar provision in the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 .

The relevant observations of the Court are as under:

“77. It may be seen from the words, expressions and phrases used by the Legislature in Section 3 of the 1962 Act that the necessity to keep a prisoner in contact with his/her family; societal expectations of his/her presence on certain occasions and the augmentation of sources of livelihood of the prisoner's family have been manifestly acknowledged. Further, sub-clause (d) of Section 3(1) is of such a wide amplitude that it can encompass any reasonable cause as a sufficient ground for the temporary release of a prisoner.

78. From the conjoint reading of the 1962 Act, Rules and the Punjab Government policy, it is seen that these benefits are extendable to all the prisoners, subject to their good behavior while in jail, except those involved in heinous offences or whose temporary release is likely to endanger State security or public peace and order.

79. Undeniably, the existing Statutes, Rules or Policy do not

contain any express or implied provision to facilitate conjugal life or the opportunity for procreation to a prisoner even if he/she has neither committed 'heinous offence' nor such convict endangers 'State security or public peace and order'. Even the Jail Reforms Committees constituted from time to time have failed to delineate on the issue. The landmarks like Sunil Batra-I & II or the later decisions could not opine whether such right(s), to be or not to be read as a part of Article 21 of the Constitution, for no such issue was ever raised in those cases.

80. The solitary purpose behind travelling into global case law on the point in issue is to assimilate the broad consensus that has emerged on judicial platforms. It may be seen that from U.S. to Europe, the rights to conjugal visits, procreation or even artificial insemination facilities have been recognised only partially, being integrally embedded in Articles 8 & 12 of 'European Convention on Human Rights' or as the rights that are fundamental to the liberty and human dignity emanating from the Eighth Amendment, and further subject to the justifiable and proportionate restrictions.

81. Reverting back to the question posed at the outset, there is no gainsaying that ordinarily the right to conjugal visits and procreation is a component of the right to live with dignity and is thus ingrained in the right to life and liberty guaranteed under Article 21 of our Constitution to which a very expansive, dynamic and vibrant meaning has been given by the Apex Court through several historical pronouncements..."

In conclusion it was observed:

"(91) Owing to the neglected and limited infrastructure, causing overcrowding, lack of specialized services and above all the prevailing social norms and the societal expectations, it may not be conducive to create space for conjugal visits within the existing prisons. It can nevertheless be introduced on trial basis in Model

Jails or Open Air-Free Jails in such a manner that the independent family units of the 'convicts with good behavior' may live like in a small hamlet. For that purpose, as of now, a team comprising (i) District & Sessions Judge, (ii) Deputy Commissioner (iii) Superintendent of Jails can identify the places where such like practices can be introduced to begin with.

(92) Since multiple inputs from the social scientists, Criminologists, Jail Administration and Judiciary along with budget allocation for the requisite infrastructures, will have a direct bearing on the policy formulation, it is not expedient or desirable for this Court to direct the actual implementation of its directions or observation(s) in a time-bound manner. The State Government shall in consultation with the High Court constitute Jail Reforms Committee to deal with different aspects of jail reforms keeping in view the observations made in this order and on submission of report by such Committee within one year from the date of its constitution, the State shall admit to the High Court the timeframe within which those recommendations shall be given effect.

(93) It is directed that until the State of Punjab effectively addresses the issues either by way of appropriate legislation or through policy framework, the expression "any other sufficient cause" contained in Section 3(1)(d) of the 1962 Act shall treat the conjugal visits of a married and eligible convict as one of the valid and sufficient ground for the purpose of his/her temporary release on 'parole' or 'furlough' though subject to all those conditions as are prescribed under the Statute."

In view of this judgment it cannot be held that the petitioner cannot be granted parole for conjugal visit and procreation.

his case for parole cannot be considered, all that needs to be said is that the Counsel for the petitioner has stated that he would apply for bail in the said case. Obviously the order for release of the petitioner on parole will not be given effect to till he secures bail in that case.

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 four weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. It is further directed that the petitioner shall not be released till he has secured bail in all the cases. The petitioner shall surrender before the Jail authorities on the expiry of four weeks of his release.

April 12, 2019

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No