

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

133

CWP-7732-2019

Date of decision: 28.03.2019

Banti

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Amit Kohar, Advocate for the petitioner.

Mr. Sandeep Vashisht, DAG, Haryana.

HARINDER SINGH SIDHU, J.

Short reply of Shamsheer Singh Dahiya, Superintendent of Jail, Central Jail, Hisar on behalf of respondents No.1 & 2 has been filed in the Court and the same is taken on record.

The petitioner is undergoing life imprisonment after his conviction in case FIR No. 492 dated 19.08.2014 under Sections 302/34 of Indian Penal Code and Sections 25, 54 & 59 of Arms Act, registered at Police Station Narnaund, District Hisar. His criminal appeal is pending.

Vide order dated 06.03.2019 of Divisional Commissioner, Hisar (Annexure P-2) sanctioned him parole for a period of three weeks to enable him to attend the marriage of his sister which is scheduled for 30.03.2019 & 31.03.2019. As per the said order, the petitioner was to be released on parole on furnishing sureties in the sum of ₹2,00,000/- each for faithful

observance of the conditions specified in the release warrant to the satisfaction of District Magistrate, Hisar. However, the District Magistrate did not accept the sureties/ bonds. He sought guidance from the Additional Chief Secretary, Government of Haryana, as to whether the petitioner could be released on parole in view of the enforcement of the Model Code of Conduct. The Additional Chief Secretary, Government of Haryana, Home Department, in turn referred the matter to the Chief Electoral Officer, Haryana for consultation. This was done purportedly in view of Question No.49 of the Frequently Asked Questions (FAQs) as contained in the Model Code of Conduct for guidance of political parties and candidates issued by the Election Commission of India.

Question No.49 and its answer are as under:-

“Q.49 Whether Govt. can release convicted criminals on parole after following due procedures?

Ans. If the Govt. feels that the release of any convict on parole is absolutely essential for certain compelling reasons, in that case Govt. shall consult the Chief Electoral Officer before granting parole.”

Sh. Sandeep Vashisht DAG Haryana has today placed on record a letter from the Chief Electoral Officer, Haryana dated 27.03.2019 stating that department has no objection to release of the petitioner on parole, subject to the condition that parole is not more than 96 hours and the instructions contained in the letter dated 16th April, 2014 of the Election Commission of India are complied with.

Learned counsel for the petitioner with reference to the decisions of this court in ***Hawa singh vs. State of Haryana and others 2012(2)***

R.C.R. Criminal 58 and Cr.Misc. No. M 8681 of 2009 Pala Ram versus State of Haryana decided on 31.3.2009. contends that merely because the Model Code of Conduct is in operation, the right for release on parole as per the provisions of the Haryana Good Conduct Prisoner (Temporary Release) Act 1988 cannot be curtailed. He argued that he should be released on parole for three weeks as sanctioned by the Commissioner Hisar Division.

In ***Hawa singh vs. State of Haryana and others 2012(2) R.C.R. Criminal 58*** it was held as under:

“8. A perusal of the above shows that it is only if the Government feels that release of any convict on parole is absolutely essential for certain reasons, in that case the Government shall consult the Chief Electoral Officer before granting parole. The Model Code of Conduct in case an election process has started would be in the nature of guidelines for the purpose of grant of parole. For grant of parole it would not supersede the statutory provisions as contained in the Act (i.e. the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988). Section 3(1)(c) of the Act reads as under :-

3(1) "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) xxxx xxxx xxxx

(b) xxxx xxxx xxxx

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

9. Sub-Section (2) of Section 3 provides the period for which a

prisoner may be released shall be determined by the State Government so as not to exceed; in the case of release of prisoners in terms of Clause (c), six weeks. Therefore, it is statutory right of a prisoner to be considered for being released on parole in terms of the provisions of the Act and if parole is granted he is entitled to be released for the period of time for which parole is granted. The provisions of the Act are to be followed for the temporary release of a prisoner.

10. It may be noticed that though the District Magistrate, Fatehabad wrote letters to the Chief Electoral Officer, Haryana, however, the latter returned the proposal to be submitted through the Administrative Secretary. The answer to the Frequently Asked Question No. 49 is that the Government shall consult the Chief Electoral Officer before granting parole. However, the District Magistrate, Fatehabad (respondent No. 3) in his reply has stated that the permission of the Chief Electoral Officer is still awaited. In fact the permission of the Chief Electoral Officer for release of a prisoner is not required and only consultation is to be made before release of a prisoner on parole. It is only required that the Government shall consult the Chief Electoral Officer. The process of consultation does not mean concurrence. In *Madan Mohan Choudhary v. State of Bihar, (1999)3 SCC 396* it was held by the Supreme Court that the word "consult" in its ordinary meaning means "to ask advice" or "to take counsel". Therefore, it is not as if permission of the Chief Electoral Officer is required to release a prisoner temporarily and he is to be consulted only. Besides, the Chief Electoral Officer is to attend to the consultation with promptness and not with delay so as to defeat the purpose for which temporary release is sought. Moreover, it is not as if a prisoner is to be released on parole during an election process only if his release is essential for certain compelling reasons as mentioned in answer to Question No.49 of the FAQs. In fact the release of a prisoner on parole can be denied in terms of Section 6 of the Act, if on the report of the District Magistrate, 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. Therefore, a sufficient safe ground has been provided for in the Act itself and if the temporary release of a prisoner is likely to endanger the security of the State or the maintenance of public order, the temporary release can be denied to a prisoner.”

Similarly in Cr.Misc. No. M 8681 of 2009 Pala Ram versus State of Haryana and others decided on 31.03.2009 it was observed that there is no bar in the Model Code of Conduct to implement the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. It was further observed that if the prisoners are not released in terms of the Act the objective of temporary release would be frustrated.

In this case the Chief Electoral Officer, Haryana has given no objection to the release of the petitioner on parole for 96 hours whereas after due consideration the Commissioner had authorized his temporary release for three weeks. There appears to be no reason to curtail that period.

In view thereof, the present petition is allowed. The petitioner is directed to be released on parole for a period of three weeks in terms of the order dated 06.03.2019 (Annexure P-2), subject to conditions and requirements specified therein on his furnishing sureties etc. to the satisfaction of the district magistrate/competent authority.

(HARINDER SINGH SIDHU)
JUDGE

28.03.2019

anju rani/Atul

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes/No