

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

CWP-9237-2019

Date of Decision: 19.08.2019

Gurvinder Singh @ Jinder

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Suheel Gautam, Advocate
for the petitioner.

Mr. Sandeep Vashisht, D.A.G. Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. Custody certificate filed by the State in Court today is taken on record.

2. Prayer in this petition is for a writ in the nature of certiorari for quashing the impugned order dated 14.02.2019 (P-1) passed by the Commissioner, Karnal Division, Karnal whereby benefit of furlough to the petitioner has been denied and it is also prayed that a writ in the nature of mandamus be issued directing the respondents/State to grant the benefit of furlough to the petitioner for a period of three weeks to enable him to meet his family members.

3. The petitioner has been convicted under Section 366-A, 364, 363, 201 and 302 IPC read with Section 34 IPC and Section 25 of the Arms Act in FIR No.140/2011 dated 4.5.2011, registered at Police Station Sadar Thanesar, Kurukshetra. Criminal appeal against the said conviction order is pending in this Court.

4. The application of the petitioner for furlough was rejected on the ground that possibility of breach of peace in village cannot be ruled out in case the petitioner is released on furlough. The local police has not

recommended furlough to the petitioner to meet his family. The Commissioner, Karnal Division, Karnal has applied the provisions of Section 6 (1) of the amended Act of 2012 of the Haryana Temporary Good Conduct Prisoners (Temporary Release) Act, 1988. The past history of criminal cases has been recorded in the impugned order i.e. four different FIRs for the period from May 2010 to February 2012 were registered under Sections 148, 149, 332, 506, 447, 511 and Arms Act. The grounds of rejection have been reiterated in the written statement.

5. There is no report in the impugned order that the release of the petitioner on furlough would involve breach of the security of the State or he would pose a danger to society. Mere apprehension of breach of peace is not sufficient reason to deny furlough. The apprehension must be real expressed in writing. As per the custody certificate, the petitioner has already undergone total period of custody of 9 years, 7 months and 15 days, of which 2 years 11 months and 24 days as an under trial and 5 years 2 months and 29 days has been spent during the conviction period. The petitioner was convicted on 21.5.2014 by the Court of the learned Additional Sessions Judge, Kurukshetra. Even if it is assumed that the petitioner is a hardcore prisoner even then he has spent more than 5 years in custody and his case can be considered for furlough in terms of the rules. The Gram panchayat has also strongly recommended the case of the petitioner for furlough certifying that there is no apprehension of breach of peace if he may be released on furlough. The view of the Gram Panchayat is a sounding board clearly in favour of the petitioner as it intimately reflects the voice of the community the petitioner belongs to and where he has been reared. Moreover the petitioner has already availed the benefit of parole for

the period 11.09.2017 to 10.10.2017 and he surrendered in time after the parole period was over. Proof of which has been placed on record as Annexure P-2.

6. Purpose of parole and furlough is to provide some sympathetic approach towards those who are lodged in jails and are broken in spirit with the monotony and humdrum of relentless jail life. It helps them to reform and to reacclimatize to the future event of release from jail. They would also learn how the community treats them as jailbirds. The main purpose of such provision is also to afford some time to the prisoners to solve their family problems and to enable them to make their link with society. The legitimate right of such prisoners should be accorded from time to time when the sentence to be served is long and dreary. In this regard, reliance is placed on the observations in the judgment of the Supreme Court rendered in the case of Asfaq v. State of Rajasthan and others; AIR 2017 SC 4986.

7. Having regard to the fact that the petitioner surrendered before the Jail Authorities in his previous release on parole and taking into account the aforesaid relevant consideration, it is deemed appropriate to grant the benefit of furlough to the petitioner for a period of three weeks.

8. In view of the above, the petition is allowed. The impugned order is quashed. The petitioner is granted furlough for three weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required to secure the presence of the petitioner in jail after the period of furlough, is over and done with.

(RAJIV NARAIN RAINA)
JUDGE

19.08.2019

rajeev

Whether speaking/reasoned

Whether reportable

Yes

Yes/No