

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

CRM-M No.39779 of 2017 (O&M)

Date of decision: 02.05.2019

Parmod and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vivek Khatri, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the orders/notices dated 03.08.2017 (Annexures P4 and P5) vide which the surety amount of the petitioners was forfeited.

Brief facts of the case are that in FIR No.20 dated 10.01.2014 registered under Sections 302, 307, 148, 149, 323, 353, 120-B of the Indian Penal Code, 1860 (in short 'IPC') at Police Station City Gurugram, one Deepak son of Kartar Singh resident of Pipli, Police Station Kharkhoda, District Sonapat, was convicted for life imprisonment vide judgment of conviction and order of sentence dated 06.01.2009. The petitioners belong to the same village as of convict Deepak. The convict – Deepak was availing agricultural paroles from time to time and as per the Custody Certificate (Annexure P-1), the said convict – Deepak has availed the following paroles/furloughs:-

1.	11.03.2010 to 02.04.2010	03 weeks furlough
2.	28.04.2010 to 27.05.2010	04 weeks parole
3.	22.07.2011 to 06.08.2011	02 weeks furlough
4.	20.10.2011 to 02.12.2011	06 weeks parole
5.	03.02.2012 to 17.03.2012	06 weeks parole
6.	20.04.2012 to 05.05.2012	02 weeks furlough
7.	23.04.2013 to 05.06.2013	06 weeks parole
8.	21.09.2013 to 06.10.2013	02 weeks furlough
9.	21.12.2013 to 19.01.2014	04 weeks parole
10.	12.04.2014 to 25.05.2014	06 weeks parole
11.	31.07.2014 to 15.08.2014	02 weeks furlough
12.	13.01.2015 to 11.02.2015	04 weeks parole
13.	20.03.2015 to 02.05.2015	06 weeks parole
14.	09.07.2015 to 24.07.2015	02 weeks furlough
15.	06.04.2016 to 21.04.2016	02 weeks furlough
16.	05.10.2016 to 17.11.2016	06 weeks parole

The aforesaid convict Deepak again applied for agricultural parole for a period of 06 weeks from 05.10.2016 to 17.11.2016 i.e. at Sr. No.16 above. The petitioners, on an earlier occasion, have furnished their surety bonds with the District Magistrate, Sonapat for the convict – Deepak and again, they furnished the surety bonds by way of an affidavit that the convict will surrender, after availing the period of parole, with the Jail Authorities within time failing which, the surety bonds/amount of Rs.2 lacs each, will stand forfeited in favour of the State of Haryana.

After the parole was granted to convict – Deepak, during the intervening period, he was involved in FIR No.673 dated 20.10.2016 under Sections 3, 13, 67 of the Gambling Act registered at Police Station Sector 10, Gurugram, however later on, he surrendered with the Jail Authorities well within the time as per the Jail Certificate (Annexure P-1), the period of which is already reproduced above.

Despite the fact that the convict – Deepak, for whom the petitioners stood surety, surrendered before the Jail Authorities within time, however, respondent No.2 has issued notices (Annexures P-4 and P-5) informing them regarding forfeiture of the surety amount as the convict – Deepak has committed an offence during the intervening period, when he was granted parole and therefore, as per the terms and conditions of the surety, given by the petitioners, they were directed to deposit the amount of Rs.2 lacs in the Government Treasury.

The present petition has been filed challenging the action of the respondents.

Reply by way of affidavit of the Assistant Commissioner of Police, City Gurugram as well as the District Magistrate, Sonapat is on record.

In the reply of the Assistant Commissioner of Police, City Gurugram, it is stated that convict – Deepak was involved in the aforesaid FIR No.673 dated 20.10.2016, during the period when he was availing parole and thereafter, he was granted bail and challan under Section 173 Cr.P.C. has been presented against him.

In the separate reply filed by the District Magistrate, Sonapat, it is stated that when Deepak was temporarily released as per the conditions specified in Form – C of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1988, instead of maintaining peace and good behaviour, he involved himself in the aforesaid FIR No.673 dated 20.10.2016. It is further stated that since the petitioners have given an undertaking in Form – C that they stand as surety for the convict – Deepak qua the terms and conditions of parole that the

convict will not violate any law and will bound himself for the purpose of granting parole and since he has violated the same, the petitioners are liable to deposit the amount of Rs.2 lacs.

After hearing the counsel for the parties and going through the paperbook, I find merit in the present petition on the following grounds:-

(a) Respondent No.2 has, in fact, not issued a notice and has rather directly passed the impugned order dated 03.08.2017 directing the petitioners to deposit an amount of Rs.2 lacs each in the Government Treasury and therefore, without affording any opportunity of hearing, the impugned show cause notice, which is in the shape of an order itself, is bad in the eyes of law.

(b) The convict – Deepak has surrendered before the Jail Authorities well within the time and has not over-stayed the period of parole for which the petitioners have given their primary surety/bonds.

(c) A perusal of Form – C along with surety bonds submitted by both the petitioners show that, in fact, it was an undertaking given by the convict in Form – C that he will maintain peace and good behaviour during his temporary release and as per the surety bonds of the petitioners, they have undertaken that in case the prisoners make a default in observing the condition of his personal bond, they will be liable.

(d) A perusal of FIR No.673 dated 20.10.2016

nowhere show that the petitioners were having any knowledge about committing of the offence by the convict – Deepak as it was a case of gambling and the same was committed in Gurugram, much away from the ordinary place of residence of the petitioners and, therefore, it cannot be said that the petitioners have violated the terms and conditions of the surety bonds.

(e) At the cost of repetition, it is not disputed by the State the convict – Deepak has surrendered before the Jail Authorities well within the prescribed time given by them and therefore, there was no violation of the surety bonds of the petitioners in this regard.

In view of the above, the *present petition is allowed* and the *impugned orders/notices dated 03.08.2017 are set-aside* and the direction issued to the petitioners to deposit an **amount of Rs.2 lacs** in the Government Treasury *is reduced to Rs.10,000/- each*. The petitioners are given 02 months time to deposit the amount.

With the aforesaid modification, this petition is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

02.05.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No