

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

**CWP No.23730 of 2018 (O&M)
Date of Decision: May 15, 2019**

Dinesh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. A.S.Trikha, Advocate for the petitioner.

Ms. Ramesh Kumar Ambavta, AAG, Haryana.

HARINDER SINGH SIDHU, J.

Present petition has been filed for quashing/setting aside the order dated 07.08.2018 (Annexure P-1) passed by the Commissioner, Karnal Division, Karnal, whereby the application of the petitioner for grant of parole for house repair has been declined.

The petitioner is undergoing life imprisonment in case FIR No.09 dated 12.02.2000 under Sections 302/34 IPC, Police Station Sadar, District Sonapat consequent upon his conviction in the said case vide judgment dated 4.12.2003.

The petitioner submitted an application for release on parole for house repair. The District Magistrate, Sonapat vide letter dated 20.07.2018 in view of the report of the Superintendent of Police, Sonapat and Tehsildar, Sonapat did not recommend his case for release on parole. Consequently, the Commissioner vide the impugned order rejected the same.

In the reply it is stated that as per the custody certificate the actual sentence undergone by the petitioner is 5 years 4 months 1 day. It is further stated that the petitioner was granted parole in the year 2006. He remained a parole absconder for 09 years 03 months and 14 days. If the petitioner is allowed parole, he may abscond again as earlier. It is further stated that according to the report received from the Tehsildar, the petitioner does not own any house.

It has been held that parole is not a matter of right. It is a concession which is extended on good conduct though regulated by the Statute [**Vakil Raj Vs. State of Haryana and others 2016(2) RCR (Criminal) 1040**]. The object of parole is to afford an opportunity to the convicts to solve their personal and family problems and to enable them to maintain their links with society. Even citizen of this country has a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, have a higher chance of reverting to criminal activity upon release. Furloughs or parole can help prepare offenders for success [**Asfaq vs. State of Rajasthan and others AIR 2017 (SC) 4986**].

When such a concession is misused and the prisoner remains an absconder for such a long period, his intent to flee from justice is evident. He may in such a circumstance render himself dis-entitled from enjoying the said benefit in future.

Similar question was considered in **Murlidhar Ramchandra**

Bhalerao v. State of Maharashtra 2011 (8) R.C.R. (Criminal) 2585 as under:

“7. Prisoners time and again claim that furlough is a right granted to them. Even assuming it is a right, once they have been given this right and they avail of it, they have a corresponding duty to report back to the prison in time. The prisoner cannot conveniently forget this duty and then again come to the Court claiming that they have a right to be released on furlough. The prisoner cannot abuse the right and then again claim the same relief from the Court. Once he abuses this right, he loses the right to claim the very same relief as of right.

8. If a prisoner has not reported back to the prison after the expiry of furlough leave, he does not deserve any sympathy. Looking to the past record of the petitioner, the order of rejection does not call for any interference. Rule discharged.”

A somewhat similar view was taken in **Motisinh Kesrisinh v.**

State of Gujarat 1994 (2) GLR 1445

“Moreover, if the prisoner committing such gross lapses of late surrender are treated lightly by granting furlough whenever they desire, the same will not only embolden and encourage them to defy the jail discipline but the same may further as well stiffen and arrogate them to twist and raise their moustaches against the jail authorities defying and challenging them in all respects? We have been informed by the learned A.P.P. Mr. Dave that in all, about 192 prisoners after their release either on parole or furlough have not surrendered to the jail authorities and are still absconding? This alarming situation must set any one concerned with the law and order situation and the jail discipline to consider why such a situation has arisen? The obvious answer to this is perhaps sometimes little overdose of humanistic and the unrealistic approach and/or taking care-free attitude in the matter of releasing prisoners on parole or furlough by authorities as well as Courts at the cost of some deterrent influence on them?

The over and undue leniency many a times ridicule and scoff at the very concept of sentencing the accused by the Court? Thus, in order to save the situation from further deterioration and to firmly enforce and maintain the jail discipline, little stricter view is required to be taken by refraining from intervening with the impugned orders of the authorities, whenever necessary. This is not to say for a moment that the jail authorities or this Court should mechanically refuse to consider the parole application, as one quite understand that in the life of a

prisoner, a situation may arise where on a humanistic ground, he may be required to visit his house and meet relatives, of course under tight police escort.

But at the same time, ordinarily if the prisoner wants to claim any sympathy on humanitarian grounds, before he so desires, he will have to qualify himself to deserve it by his conduct and behaviour in and outside the jail, which is entirely in his hands only and not with the jail authorities.”

A Full Bench of the Gujarat High Court considered a somewhat similar question in **Bhikhabhai Devshi v. State of Gujarat** 1988

(1) R.C.R.(Criminal) 286 :

“30. As far as the first part of R. 4(10) is concerned in respect of prisoners who have escaped or attempted to escape, such prisoners, a class by themselves, cannot be trusted for being released on furlough and, therefore, in such cases the prison authority would be justified in not considering their request for furlough. However, in cases of late surrender, where there is not element of escape, but merely there is a delay in surrendering, the question will have to be examined on the facts and circumstances and merits of each case. A given case of a prisoner defaulting in timely surrender, who is wanted by the jail authorities and who is not available at the place where ordinarily he should be and who is apprehended by the police or who surrenders because of the chase by the authority, may fall under the first part where he cannot be trusted to be released on furlough again. But such cases are at the other extreme.”

The petitioner has grossly misused the concession of parole by absconding for almost a decade. This fact cannot be overlooked while considering the subsequent parole application of the petitioner.

A person who has been convicted under a serious offence and has been given the liberty of parole is expected to abide by the conditions of parole and should return to the jail as soon as the period of parole is over. While an overstay of some days or even weeks for circumstances beyond the control of the convict may not justify denial of parole in the future the

case of one who absconds for very long indicating his intention to frustrate the order of conviction would stand on a different footing.

There are provisions in the The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and The Haryana Good Conduct Prisoners(Temporary Release) Act, 1988 which deal with short period of overstay. Penalties are provided for such overstay. The relevant provisions are as under :-

Section 8 of The Haryana Good Conduct Prisoners(Temporary Release) Act, 1988 states that :-

“Section 8 :

"(1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer incharge of the prison from which he was released to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely :-

(a) a minimum cut of five days remission for each day of overstay;

(b) stoppage of canteen concession for a maximum period of one month;

(c) withholding concession of either interviews or letters or

both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from higher to a lower class or grade".

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(2) If a prisoner does not surrender himself as required by subsection (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely---

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(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from the status and grade of “Convict Watchman” or “Convict Overseer”. ”

The overstay contemplated in these provisions is obviously of a short duration. Such overstay would only be visited with penalties provided for under these provisions and may not debar release on parole subsequently. But the case of persons who abscond for years have to be treated differently. Judicial notice can also be taken of the fact that there are a large number of parole absconders which poses a serious threat to society besides a making a mockery of the criminal justice system.

The respondents are thus justified in declining the request for parole of the petitioner.

The above may not however be understood as indicating that in no case may the petitioner be released on parole. While the Authorities may be justified in declining parole in normal circumstances, in emergent conditions under pressing humanitarian considerations the petitioner may be considered for release on parole for short periods under appropriate stringent conditions so that he may not abscond. As in this petition the petitioner is not seeking temporary release on any emergent humanitarian consideration no direction for his release can be passed.

The petition is disposed of.

May 15, 2019

(HARINDER SINGH SIDHU)

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JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes/No