

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24333-2018

Date of Decision:-21.08.2019.

Ashwani Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Majra, Advocate for the petitioner.

Mr. Sandeep Vashisht, DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. Short reply by way of affidavit filed on behalf of the respondents is taken on record. Copy thereof stands supplied to learned counsel for the petitioner. He has gone through the same.

2. Through this petition, the petitioner has sought for a writ in the nature of certiorari for quashing the order dated 02.01.2019 (P-3) passed by respondent No.3- the Superintendent, District Jail, Faridabad, whereby benefit of parole to the petitioner has been denied and order dated 15.11.2018 passed by the District Collector, Kaithal forfeiting the two sureties directing them to deposit an amount of Rs.50,000/- each in Government treasury and also for issuance of a writ in the nature of mandamus directing the respondents to grant the benefit of parole to the petitioner for a period of four weeks to enable him to construct his new house.

3. The petitioner was convicted and sentenced to undergo rigorous imprisonment for life under Sections 364-A of IPC in case FIR No.107 dated 20.10.2007 registered at Police Station Dhand, District Kaithal. Appeal against

conviction filed by the petitioner has been dismissed by this Court vide judgment dated 19.09.2016.

4. What went against the petitioner is that when he was granted furlough to meet his family members and to restore the social ties, he got married on 04.09.2018 without informing the jail authorities. Learned counsel submits that the petitioner got married in an inter-caste marriage due to which reason his family is not permitting the couple/wife to reside with them. Therefore, the petitioner wants to construct a new house on vacant plot they have in the village.

5. Perusal of the impugned order dated 02.01.2019 shows that the application of the petitioner has been rejected on the ground that a mobile phone was recovered from the petitioner in the month of November, 2017. An FIR in this regard was registered against him. Again on 27.09.2018, a mobile was recovered from the petitioner and second criminal case was registered him. Therefore, the case of the petitioner falls in the category of hardcore prisoner, as per Section 2(aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 and is not entitled to any relief of parole or furlough. It is further stated that punishment for separate confinement for 30 days was approved by the learned Sessions Judge, Faridabad vide dated 29.10.2018. In the reply grounds of rejection have been reiterated. However, it is submitted that the petitioner has been acquitted on 21.01.2019 in first case registered against the petitioner for recovery of mobile in jail. It also comes out that previously the petitioner was released on furlough as allowed by this Court and he had to surrender on 12.09.2018 but the petitioner jumped the furlough and remained absent for one day. As far as construction of new house is concerned, there is no mention either in the impugned order or in the reply.

6. Learned counsel for the petitioner argues that there is no allegation of mobile phone having used by the petitioner while in jail. The petitioner, in the

absence of any such allegation, does not fall in the category of hardcore prisoner. Learned counsel explains that the petitioner was not able to return back on time when he was granted furlough due to unavoidable circumstances. He came late in night on 12.09.2018 but the jail authorities closed the door so he surrendered on 13.09.2018 at 8.30 A.M.

7. On the other hand, learned State counsel while opposing the prayer made by the learned counsel for the petitioner submits that the petitioner has previously violated the parole rules and falls in the category of hardcore prisoner. Hence, the benefit of parole should not be granted to him.

8. Having heard learned counsel for the parties, I am of the view that this is not a case in which parole should be denied as the same is prayed by the petitioner for construction of a new house after his marriage. Due to which, his family is not permitting his wife to reside with them. After the petitioner got married, he surrendered one day late for which he has been denied the benefit of parole. I find that this is not any gross misuse of parole as the main reason for parole still subsists to meet his wife and family and to return temporarily to his society.

9. The District Collector, Kaithal vide order dated 15.11.2018 has ordered that the sureties have not performed their responsibility with dedication and that out of the amount of Rs.2,00,000/- each paid by the two sureties, therefore, out of which Rs.50,000/- each has been ordered to be forfeited in the Government Treasury with a direction to deposit within 10 days. It has been further stated that in case sureties fail to pay the amount, the bail bonds which were granted on the basis of the immovable property would be attached and the amount would be recovered as outstanding land revenue. I think this order is too harsh and not sustainable in law.

10. A Division Bench of Delhi High Court in **Dinesh Kumar vs Govt. of NCT of Delhi**, 2012(4) R.C.R.(Criminal) 83, decided on 01.05.2012, has held as under : –

“22. The provisions of parole and furlough provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have 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, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs can help prepare offenders for success.”

11. In view of the above, the petition is allowed. Both the impugned orders dated 02.01.2019 (P-3) and 15.11.2018 (P-4) are quashed. The petitioner is granted parole for four weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as required to secure the presence of the petitioner in jail after the parole period is over.

(RAJIV NARAIN RAINA)
JUDGE

August 21, 2019.
Sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes / No.