

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

**CWP-27384-2018 (O&M)
Date of Decision: April 12, 2019**

Balwant

...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 19.09.2018 (Annexure P-1) passed by the Commissioner, Rohtak Division, Rohtak, whereby the application of the petitioner for grant of agriculture parole has been declined.

The petitioner is undergoing rigorous imprisonment for 7 years in case FIR No.662 dated 27.10.2009 under Sections 398, 307, 332, 120-B IPC and Section 25 of the Arms Act, Police Station City Kaithal, District Kaithal consequent upon his conviction in the said case vide judgment dated 27.07.2012 of the Ld. Additional Sessions Judge, Kaithal.

The petitioner submitted an application for release on parole to the Superintendent, District Jail, Jhajjar. The Divisional Commissioner, Rohtak vide the impugned order rejected the application stating that the petitioner is a habitual offender and that he may commit any crime and

peace can be disturbed if he is released on parole.

In the reply filed on behalf of the respondents it has been stated that the petitioner has also been convicted on 29.11.2012 in case FIR No.16 dated 12.02.2010 under Sections 302/34 IPC and Section 25 of the Arms Act, P.S. Kalayat. While sentencing the petitioner to undergo imprisonment for 20 years the learned Sessions Judge, Kaithal had vide order dated 29.11.2012 directed that the petitioner should not be released from prison before completion of actual term of twenty years including the period already undergone by him in case during investigation and trial.

Details of various other cases in which he has been convicted and acquitted have been given.

The cases in which he has been convicted are as under:

- (i) Convicted on 23.03.2005 in case FIR No.287 dated 30.06.2000 under Sections 387,120-B IPC, Police Station City Kaithal and sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs. 500/-. He was released in this case on 20.03.2008 after the completion of sentence after giving the benefit of UTP and remissions earned.
- (ii) Convicted on 17.10.1995 in case FIR No.514/94 under Sections 364/387/342/506/120-B IPC Police Station Yamuna Nagar and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.800/-. In appeal the sentence was reduced from life to 10 years rigorous imprisonment. He was released in this case on 24.10.2006 on completion of sentence after given the benefit of UTP and remissions earned.
- (iii) Convicted on 7.10.2008 in case FIR No.305/03 under Sections 392/411 IPC Police Station Kutub Shergarh (U.P.) and and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.5000/-. He was released in this case on

completion of sentence on 10.03.2018 after given the benefit of UTP and remissions earned.

(iv) Convicted for the sentence already undergone on 24.08.2011 in case FIR No.371/10 under Sections 174-A IPC Police Station City Kaithal.

(v) Convicted for the sentence already undergone on 13.06.2011 in case FIR No.601/09 under Sections 8/9 HGCP Act, Police Station City Kaithal.

(vi) Convicted for the sentence already undergone on 13.06.2011 in case FIR No.369/10 under Sections 174-A IPC Police Station City Kaithal.

(vii) Convicted for the sentence already undergone on 13.06.2011 in case FIR No.366/2K under Section 25 of Arms Act, Police Station City Kaithal.

He has been acquitted in following seven cases :

(i) Acquitted on 11.10.2006 in case FIR No. 280/04 under Section 392 IPC, Police Station Pehowa.

(ii) Acquitted on 07.03.2007 in case FIR No. 68/04 under Sections 302,216,34 IPC and 25 of Arms Act, Police Station City Kaithal.

(iii) Acquitted on 01.09.2008 in case FIR No. 119/04 under Sections 364-A,216,163,120-B IPC and 25 of Arms Act, Police Station Sadar Kaithal.

(iv) Acquitted on 15.05.2007 in case FIR No. 112/04 under Sections 186,353,307 IPC, Police Station Special Cell, Lodhi Colony, Delhi.

(v) Acquitted on 03.12.2008 in case FIR No. 203/04 under Sections 364-A, 216-A,411,120-B IPC and 25 of Arms Act, Police Station Sadar Kaithal.

(vi) Acquitted on 09.10.2012 in case FIR No.580/09 under Sections 307,120-B,34 IPC and 25 of Arms Act, Police Station City Kaithal.

(vii) Acquitted on 02.01.2018 in case FIR No. 227/11 under Section 42 Prisons Act, Police Station Sadar Kaithal.

Apart from the above it has been stated that the petitioner has committed the following Jail offences:

(i) The petitioner/convict was released on 17.08.2009 for three weeks parole and directed to surrender on 08.09.2009 but he did not surrender in time. He was lodged in jail by local police on dated 20.07.2010 after the overstay of 10 months & 12 days for which FIR No.601/09 U/S 8/9 HGCP Act, P.S. City Kaithal was registered. The petitioner has been convicted for the sentence already undergone on dated 13.06.2011.

(ii) He was found in possession of a mobile phone during search on 07.04.2011 for which he was produced before the then Superintendent of Jail, District Jail Karnal. He was awarded the punishment of confinement in security ward for 30 days. The punishment awarded was got judicially appraised from the Ld. District & Sessions Judge, Karnal vide order No.11643 dated 30.05.2011.

(iii) On 06.11.2012 while confined in District Jail Kaithal he was found in possession of a mobile phone. For this he was awarded punishment of confinement in security ward for two months which was got judicially appraised from the Ld. District & Sessions Judge, Kaithal vide order No.8064 dated 30.11.2012.

(iv) On 26.04.2014 he with his co-accused quarreled with other prisoners while confined in District Jail, Kaithal for which he was awarded the punishment of oral warning.

(v) On 16.08.2014 he with his co-accused quarreled with other prisoners while confined in District Jail, Kaithal for which he was awarded the punishment of confinement in security ward.

It has been stated that the petitioner is a hardcore criminal and

belongs to the Surrender Geong Gang and came under the category of a “Hardcore Prisoner” as per Section 2(aa)(i)(ii)(iii)(iv) & (v) of Haryana Good Conduct Prisoners (Temporary Release) Act. But as he has completed his five years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail as judicially appraised by the concerned District and Sessions Judge so he is eligible for parole as per sub-section(2) of Section 5-A of Haryana Good Conduct Prisoners(Temporary Release) Act.

Thus the petitioner has been denied parole in view of the fact that he is a habitual offender. He may commit crime if released on parole and peace may be disturbed in the area. Besides while convicting him in case FIR No. 16 of 12.02.2010 under Sections 302/34 IPC the Ld. Sessions Judge has directed that he should not be released from prison before completion of actual term of twenty years including the period already undergone by him during investigation and trial of the present case.

I have gone through the order of the Ld. Sessions Judge dated 12.02.2010.

The relevant extract from the order is as under :-

“Convict-accused Balwant in the earlier case was though, not undergoing sentence of imprisonment for life but he committed the present offence while he was on parole in the earlier case and the fact that another offence was committed by the convict-accused Balwant while on parole further requires that a rider for undergoing minimum 20 years of imprisonment must be imposed in his case.

Accordingly convict-accused Balwant is hereby sentenced to undergo imprisonment for life for the commission

of offence punishable under Section 302/34 IPC and it is ordered that he should not be released from prison before completion of actual term of twenty years including the period already undergone by him during investigation and trial of the present case. ”

The direction in this order appears to be against the premature release of the petitioner before he completes actual term of twenty years including the period already undergone by him during investigation and trial of the case. It may not be taken to interdict the temporary release of the petitioner on parole .

Though the petitioner is a 'hardcore prisoner' within the meaning of the Act, but even as per the stand of the respondents in their reply because he has completed his five years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail as judicially appraised by the concerned District and Sessions Judge he is eligible for parole as per sub-section(2) of Section 5-A of the Act.

It has been held by Division Bench of this Court in **Ram Chander Vs. State of Punjab and others 2017(3) RCR(CrI) 340** that likelihood of committing a crime while on parole would not be a sufficient ground to deny temporary release on parole as merely likelihood of committing a crime is not to be taken as apprehension of a threat to the security of the State or maintenance of public order. Temporary Release Acts envisage temporary release of convicts. Mere fact that a person is convicted for an offence does not mean that he will abscond or commit a crime if released on parole. It is always open to the Authorities to impose

stringent conditions to guard against such eventualities.

Accordingly, this petition is allowed. The impugned order is set aside. The respondents are directed to re-consider the case of the petitioner for his release on parole. The direction in the order dated 12.02.2010 of the learned Sessions Judge that “...*the petitioner should not be released from prison before completion of actual term of twenty years...*” be not understood as prohibiting the temporary release of the petitioner on a valid ground for temporary release under the Act.

Disposed of.

April 12, 2019

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No