

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

CWP No.30796 of 2018 (O&M)

Date of decision: 14.02.2019

Yogender @ Yogi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ravinder Bangar, Advocate
for the Petitioner.

Mr. Sanjay Vashisth, AAG, Haryana

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the District Magistrate, Yamuna Nagar dated 14.11.2018 (Annexure P-1), whereby, the application of the petitioner for release on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing life imprisonment in case FIR No.89 dated 9.3.2008, under Sections 364A/377/201/34/420/11/468/471 IPC and Section 25 of the Arms Act, Police Station City Thanesar, District Kurukshetra after his conviction by the Trial Court. His Criminal Appeal No.D-487-DB of 2013 is pending before this Court.

The petitioner submitted an application to the Superintendent, District Prison, Yamuna Nagar for grant of parole for agriculture purpose, upon which a

Report was sought from the District Magistrate, Saharanpur (UP). After getting

report from Authorities at Saharanpur that the petitioner's family includes his wife, a son and a daughter and that the son is able to do agriculture work, and further that the character of the petitioner is not good in the village and there is an apprehension of breach of peace in the village and that he may commit crime again and may also abscond if released on parole, the District Magistrate rejected the application for parole vide the impugned order. The impugned order also noted the report of the Senior Superintendent of Police, Saharanpur that the petitioner is a sharp minded criminal. The impugned order reads:

“District Magistrate, Saharanpur vide letter no.3405-06 (Prisoner parole) 08.03.2018 on the report of Senior Superintendent of Police, Saharanpur denied the parole on the basis of that prisoner is a sharp minded criminal. So that the prisoner has an apprehension that he can do crime again after absconding and he will try to abscond him and will not return. And except this the District Magistrate, Saharanpur sent a report vide Sr.No.453-54 (Prisoner Parole) 30.05.2018 and report of Tehsildar, Devband & report of area revenue office of village Rankhandi are annexed as per report prisoner is doing agriculture at his own and prisoner has not given his land on lease or patta. Prisoner has wife, one son and one daughter in his family and the son of the prisoner is able to do agriculture work. That as per Haryana Good Conduct Prisoner Act (Temporary Release) Section 6 and amended Section 6(1) in the absence of report again a report has been sought from District Magistrate, Saharanpur and received vide Sr.No.1799/1800 (Prisoner Parole) 30.10.2018 and found that the character of the prisoner is not good in the village and there is an apprehension of breach of peace of village if the petitioner comes on parole and again District Magistrate, Saharanpur denied the parole of the prisoner.”

In the reply filed by the Deputy Superintendent, District Jail, Yamuna Nagar on behalf of the respondents, it has been stated that the petitioner was eligible for parole in January, 2018 as he had completed more than five years of imprisonment in jail. His case for release on parole for agriculture purpose was forwarded by the Superintendent Jail, District Jail Yamuna Nagar to District Magistrate, Saharanpur (U) for verification and recommendation vide communication dated 16.01.2018. The reply further states that the District Magistrate, Yamuna Nagar has rejected the parole case of the petitioner on the recommendation of the District Magistrate, Saharanpur dated 14.11.2018.

Learned counsel for the petitioner has argued that the petitioner had earlier also availed the concession of parole. He had surrendered on time. There was no report that he has misused the concession of parole. Thus, the argument of apprehension of breach of peace in the village and that he may abscond or indulge in crime is unfounded. Reference has been made to document dated 28.11.2018, in which the Gram Panchayat, Rankhandi, Tehsil Devband, District Saharanpur (UP) has resolved that there is no such apprehension and the petitioner had availed parole on earlier occasions also.

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.

The ground that there is a possibility of the petitioner absconding or

involving in other serious crime while released on parole, is just the apprehension in the mind of the Authority which is not based on any substantial material, as none has been brought on record.

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 if he is released on parole. As held by a Division Bench of this Court in **Baljit Singh Vs. State of Punjab 2017(2) Law Herald 1796** if the State has any apprehension that the convict will jump parole it can always impose adequate conditions including asking for heavy surety.

Further, the mere fact that the petitioner has one wife and a son and a daughter in his family, would be no ground to deny parole for agricultural purposes. The land holdings are usually very small. Agricultural operations are a joint effort in which the entire family is involved. It is only when all the members of the family contribute their labour that they can sustain themselves.

Accordingly, this petition is allowed. The impugned order is set aside. The respondents are directed to re-consider the case of the petitioner for grant of parole afresh in view of above observations and pass necessary orders within a period of three weeks from the date of receipt of a certified copy of this Order.

February 14, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No