

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

**CWP No.26346 of 2019 (O&M)
Date of Decision: November 14, 2019**

Sameer Nain

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Prateek Rathee, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. Petitioner has been sentenced to life imprisonment till the time he dies in jail. The trial Court judgment of conviction and sentence was passed on 07.08.2013. The High Court upheld the said judgment by judgment dated 20.03.2019. The convict's appeal to the Supreme Court failed in September 2019. The punishment stands confirmed. He is serving sentence for murder in Central Jail-I, Hisar. He has been in jail for about 8 years and 8 months. It is not disputed that the petitioner has been released temporarily either on parole or furlough on 8 or 9 occasions after the trial Court judgment and before the High Court judgment, which upheld the trial Court judgment. If the parole was deemed fit to grant after such extreme punishment handed

down to serve jail till natural life then I see no fair reason why it should not be grantable in the second and the third limb of the proceedings culminating in the Supreme Court.

2. This is the first time, the petitioner has applied for parole after his conviction and sentence had attained finality. The prayer has been declined by the Commissioner, Hisar Circle, Hisar, vide order dated 14.08.2019, on the ground of non-availability of provisions for temporary release on parole or furlough of convict undergoing life sentence till natural death.

3. It is argued by Mr. Rathee that there is no animated provision in the Haryana Good Conduct Prisoners (Temporary Release) Act, which creates a complete bar on grant of parole/furlough in cases of sentences of life till natural death. However, there is indication from where light can be thrown on the issue of temporary release in cases of sentences till natural life in the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. Mr. Rathee draws attention of this Court to Rule 5 which deals with ineligibility and is to be read with Sections 10(2)(d) and 10(2)(g) creating a prohibition to the effect that no parole/furlough shall be granted to a prisoner who has been sentenced to death penalty. Sections 10(2)(d) and 10(2)(g) are reproduced below for ready reference:

“Ineligibility- No parole/furlough shall be granted to a prisoner who has been sentenced to death penalty.”

4. It follows that there is a statutory bar in cases of death penalty against grant of parole/furlough. But this is not a case of death penalty and therefore, no absolute bar is created. The Acts and Rules are silent on this aspect as to what is to be done in a case where the Courts have awarded sentence of imprisonment till natural life. It may cross one's mind that the parole is to be granted for the convict to fraternize with his family community as a reformatory measure for a short period of time with the view that when he is released after serving sentence and returns to the society after serving out his sentence he is already acclimatized to his old surroundings otherwise he would have lost touch had he not been allowed temporary bail on parole or furlough. If this principle is to be carried forward then one may think why should a person sentenced till natural life should be given the benefit of returning to his community which he will never.

5. But on closer look, I think that such a strict strait jacket approach will be against the overall reformatory approach in such matters, an approach which is a judicially accepted principle of criminal jurisprudence and with a touch of humanism it may be apt to apply it to a case of sentence of imprisonment till natural life. We cannot dismiss in such a case right of consideration to meet events such as being there for the admission of children in school, illnesses of parents, death of family member, marriage, urgent house repair, to give helping hand for agricultural purposes in an agrarian State and so and

so forth where life convicts temporary release may be justified. If there is parole to be had as an enforceable concession, it is then becomes the duty and responsibility of the State to ensure that on expiry of the period of parole or furlough, the man returns to jail to serve his remaining sentence. To these ends adequate surety are taken and other condition imposed to guard against person jumping parole or furlough.

6. It is now a time to deal with a judgment relied upon by Mr. Mohunta in **Vijay Pal @ Goldy vs State of Haryana and others** passed in CWP No.17367 of 2019 decided on 04.07.2019, in which Single Bench noticed and relied upon the judgment of the Supreme Court in **Krishan Lal vs. State of Rajasthan and another**, AIR 2013 SC 411. Krishan Lal's case is also a case of imprisonment till natural death and is thus a case in point. Krishan Lal was sentenced to death by the trial Court and his sentence in appeal was converted into imprisonment of life with the condition that the appellant shall not be entitled to any commutation or pre-mature release under Section 401 of the Code of Criminal Procedure, 1973. Faced with the prospect of death, Krishan Lal's counsel had submitted before the Supreme Court that in case the sentence is converted from death to life, his client would never claim pre-mature release or commutation of sentence on any ground. It also comes out from the facts that Krishan Lal has been released twice on regular parole of 20-30 days by the Parole Advisory Committee and not on the intervention of Court. However, his third parole for 40 days was

declined. Reconsideration by the authorities was ordered by the Rajasthan High Court. The case was reconsidered and parole was granted. It cannot be ignored that, in the case of Krishan Lal (supra) the complainant/victim approached the Rajasthan High Court for quashing the said order wherein parole was granted to Krishan Lal by the authorities. The said order was quashed. However, the appeal came to the Supreme Court. While distinguishing the judgment the Single Bench in Vijay Pal @ Goldy found that Parole Advisory Committee had exercised suggestions to allow the parole and also that the State had neither exercised such powers nor there was any undertaking by any Court or by the counsel that the petitioner may not be granted death sentence and that he will not claim any commutation or permission. As far as the relief of parole was concerned, the Court is of the view that considering the fact that sentence is of life imprisonment till natural death, there is every possibility that the petitioner may abscond. Therefore, Vijay Pal @ Goldy was held to be entitled to attend the marriage of his sister under armed escort.

7. It is pointed out by Mr. Rathee that in Vijay Pal @ Goldy' case, the petitioner was declared a hard core prisoner under Section 2 (aa) (i) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Therefore, he was released on armed escort for three days. As far as danger of absconding is concerned, that may not be sufficient reason to decline parole as the conditions can be placed on the petitioner, in

case parole is granted, apart from giving adequate to heavy surety to the satisfaction of the District Magistrate concerned. The fact that the petitioner was released on parole or furlough for 8-9 times in the past is sufficient reason to suggest that the petitioner would not abscond. In case the petitioner misuses the concession of parole granted to him by this Court in this order, it is directed that he will never be released on parole/furlough during the remainder of his natural life. This is a strong and potent guard against any misuse of concession or jumping parole by the petitioner. He will be aware of the terrible consequences if he runs away and is arrested.

8. Having considered the arguments put forth by Mr. Rathee and Mr. Mohunta, I am of the view that this is not a case where parole cannot be granted as an absolute bar. The Act and Rules of Haryana are silent on the point leading to sufficient room for interpreting the provisions in the manner that will favour the convict. The petitioner has applied for parole for agriculture purpose. He is the only son. He has land to tend and if the season passes without reaping and sowing etc., there will be financial loss to the family.

9. The State in its reply has objected the claim contending that the petitioner cannot claim parole as a matter of right as it is a concession and not a privilege. Concession it is, but the concession is controlled by the provisions of the Act and Rules framed thereunder. Concessions also have to be worked reasonably, rationally and non-

arbitrarily by the High Court. For these reasons, the petition is allowed.

The petitioner is granted parole for six weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required in the Jail Manual etc including adequate surety/security toward the ends of securing the presence of the petitioner in jail after the period of parole is over.

10. The petitioner will supply his contact phone/mobile number in his village/town to the Station House Officer, Karamgarh, Tehsil Narwana, District Jind when he arrives in his village on parole he will inform the police on the same day and remain in touch with the police on regular basis at suitable intervals. He will do the same on his return journey to jail. He will also inform the S.H.O/ Police Station of his movements in case he has to venture out of his village during the period of stay for agricultural needs.

(RAJIV NARAIN RAINA)
JUDGE

November 14, 2019

sarita

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No