

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

108

CWP No.30585 of 2019 (O&M)
Date of Decision: 24.10.2019

Shailender Kadian

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

Ms. Anu Pal, DAG, Punjab.

Mr. Saurabh Mohunta, DAG, Haryana.

RAJIV NARAIN RAINA, J (ORAL)

When this matter came up for preliminary hearing on
22.10.2019, the following order was passed:-

“Notice of motion returnable by 24.10.2019.

On the asking of Court, Ms. Anu Pal, DAG, Punjab
accepts notice on behalf of respondents No.1 to 4, while Mr.
Saurabh Mohunta, DAG, Haryana accepts notice on behalf of
respondent No.5-Deputy Commissioner, Rohtak.

The authorities at Rohtak have submitted positive
reports in favour of the petitioner which enabled him to
secure parole twice in 2019, only for the period 19.03.2019 to
17.04.2019 and second for the period 04.06.2019 to
28.08.2019. The petitioner belongs to Rohtak. He is convicted
for murder with occurrence in Sri Muktsar Sahib, Punjab,
within the jurisdiction of respondent No.4. Earlier, it appears
that the authorities called for the reports from the native
village/town/city/districts of the convict, in cases where
parole is sought.

The case of the petitioner has been rejected citing the new instructions. These have been issued on 03.10.2011 by the Additional Director General of Police (Jails) Punjab, Chandigarh which now demand a verification report from the District Magistrate where the convict has committed the crime, apart from the verification reports called from the place where the convict is to spend time during his parole and where he is resident of.

Presently, the petitioner has made a prayer for parole. He has served sentence for 12 years and 4 months and with remissions about 20 years for committing the offence of murder under Section 302 of the Indian Penal Code. Because parole has been granted twice this year, that is sufficient to show that the convict has kept good behaviour in jail.

The petitioner prays that he may be granted furlough to familiarize with his family and to celebrate Deepawali with them. He had applied for furlough in September, 2019 which has been rejected by the authorities on 10.10.2019, leaving somewhat little room for approaching Court in time in anticipation of request for furlough in Deepawali season, accordingly, the respondents and particularly respondent No.4/District Magistrate, Sri Muktsar Sahib be asked to submit his report by the next date about the case of the petitioner for furlough. If the parole has been granted by the authorities at Rohtak, then Mr. Mohunta will request the District Magistrate, Rohtak also to look into the relevant papers of the case of the petitioner for furlough and make his recommendations.

The Superintendent of Police, Rohtak vide his letter dated 09.10.2019 has certified that the petitioner remained peaceful at his home while on parole and there is no case/FIR registered against him during the parole period from 04.06.2019 to 28.08.2019. This letter was received at the Central Jail, Faridkot on 21.10.2019. Learned counsel would supply the photocopy of this letter to both the State counsel with a copy of the paper book.

To be shown in urgent list.”

Since the request for furlough was coinciding with the Deepawali festival, this Court had put the State of Punjab to short notice of two days. Ms. Anu Pal, DAG, Punjab appearing for the State of Punjab is right in saying that there was insufficient time to file written statement and accordingly, she sought oral instructions from the District Magistrate, Sri Muktsar Sahib, who examined the file and was of opinion that furlough should be denied to the petitioner for the reason that his co-accused while on parole had failed to surrender in time and while he was absconding, had committed another murder of a member of the same family. That incident is of 2011. In this regard, an FIR stands registered and trial is in progress, but status of the case is not known to Ms. Anu Pal, DAG, Punjab.

Mr. Verma, appearing for the petitioner submits that his client was a lawyer belonging to the Rohtak Bar and his father remained President of the Rohtak Bar and there is no question of not surrendering back in jail in time, in case furlough is granted. As the above order indicates the petitioner has already availed the benefit of parole twice in the year 2019 and surrendered in time. He has served sentence of 12 years and 4 months. To deny furlough to the petitioner on the apprehension of committing offences like his co-accused to whom he is not related, nor related to the victim's family in Sri Muktsar Sahib would, I think, not be right thinking to make the petitioner pay for the act of the co-accused for an incident not related to him. I am, therefore, not inclined to accept the objection of the District Magistrate, Sri Muktsar Sahib based on a remote incident of a co-accused and his conduct for which the law is taking its course and which has nothing to do with the petitioner.

Besides, the Haryana Police has recommended the case of the

petitioner for parole and I see no reason why the prayer for parole based on good conduct during jail should not be afforded to him this Deepawali season.

Mr. Verma, submits that the petitioner has not celebrated Deepawali with his family for the last 12 years and this is one occasion when he can be with his family members.

Accordingly, this petition is allowed. The petitioner is admitted to temporary release by way of furlough for a period of 21 days from 26.10.2019 onwards to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required in the Jail Manual toward the ends of securing the presence of the petitioner in jail after the period of furlough is over and done with and the temporary release is not misused. The petitioner is permitted to furnish his surety by tomorrow.

A copy of this order be given to Mr. Verma under the signatures of the Bench Secretary attached to this Court.

Disposed of accordingly.

(RAJIV NARAIN RAINA)
JUDGE

24.10.2019
D.Bansal/Vimal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No