

Sr.No.124

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

**CRWP-1595-2019(O&M)
Date of decision:10.12.2019**

Sandeep Shyokand

... Petitioner(s)

versus

State of Haryana and others

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Sukhdev S.Gopera, Advocate
for the petitioner.

Ms. Harpreet Kaur AAG, Haryana.

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed by one Sandeep Shyokand who is presently on parole seeking quashing / setting aside / modifying the impugned order dated 04.10.2019 (Annexure P-1) passed by respondent No.2 whereby has been granted parole for 28 days on the basis of his application under the provisions of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as 'the Act').

It has been argued by learned counsel for the petitioner that he had applied for agricultural parole for a period of 42 days and this fact has not been disputed by the State in their reply. In reply, it has been specifically stated that he had applied parole for six weeks for agriculture purpose. However, the competent authority had sanctioned only four weeks parole to the petitioner. Learned counsel for the petitioner submits that the purpose of seeking parole was for agriculture purpose because their family had sown cotton crop in the land owned by him which was due to be harvested during these days but due to certain climatic conditions the same

could not be harvested in time and further time was needed for sowing of wheat crop of late variety. He has further submitted that parents of the petitioner are of old age and will not be able to do the agriculture work. The petitioner has also relied upon the order passed by the co-ordinate Bench of this Court in CWP No.17741 of 2019 (Annexure P-2) where some what or similar kind of situation has arisen and time period of parole was extended till 42 days.

Per contra learned State counsel referred to the reply filed by Superintendent of Jail, Central Jail-1, Hisar dated 03.12.2019 and has submitted that parole is not a vested right of the petitioner and it is merely a concession which is given to the convict under the provisions of the Act and Rules framed thereunder and therefore, the petitioner can not claim it as a matter of right. It is further submitted by the learned State counsel that when there is statutory bar then parole can not be extended.

After hearing the learned counsel for the parties, the position which emerges is that the grant of concession of parole is governed by the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which has been attached with the reply filed by respondents No.1 and 3 as Annexure R-2. The provisions of Sections 3 (1) and 3 (2) are reproduced as follows:-

3 (1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, By Notification in the official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-

Section (2), any prisoner, if the State Government is satisfied that --

(a) a member of the prisoner's family had died or is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for sloughing, sowing or harvesting or carrying on any other agricultural operation his land or his father's undivided land actually in possession

(d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

(b) where the prisoner is to be released on the grounds specified in clause (c)of sub-section (1), six weeks;

Provided that the temporary release

under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks.”

Further the provisions of Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is reproduced as follows:-

6. Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate, the State Government or an officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order.”

Perusal of the above stated provisions would show that the State Government may in consultation with the District Magistrate or any other officer appointed on his behalf may temporarily release any prisoner for a period specified in Section 3 (2) if the State is satisfied that the temporarily release of the prisoner is necessary for sowing or harvesting or carrying on any other agriculture operation on his land or his father's undivided land actually in possession of the prisoner and that when it is desirable to do so for any other sufficient cause for which the prisoner is to be released on the ground specified in Section 1(c) of the Act is six weeks. In the present case, the petitioner had applied for parole of six weeks in pursuance of the provisions of Section 3 of the Act. This fact has been admitted by respondent Nos. 1 and 3 in para 5 of the reply. A perusal of the

impugned order dated 04.10.2019 (Annexure P-1) whereby parole of four weeks has been granted does not specify the reason as to why the four weeks parole has been granted instead of six weeks.

Be that as it may, it is always the discretion of the competent authority to specify the time in view of the provisions of Section 3 of the Act because the provisions of Section 3 of the Act provide that the parole would not exceed six weeks. It is also settled position of law that the grant of parole is not a matter of vested right of prisoner; it is only a matter of concession which the State Government is to give.

A perusal of the pleading of the parties and the arguments raised by learned counsel for the parties, it has come on record that averments made by the petitioner in para 10 of the petition that he wanted parole of six weeks for his domestic agriculture purpose has not been controverted by the State while filing reply to para 10 of the petition. Even a perusal of the reply and the submissions made by the learned State counsel it is no where a case of the State that his extension of further period of two weeks is likely to endanger the security of the State or the maintenance of public order.

In view of the above, although it would have been just and proper to remand the case back to the competent authority for deciding it with regard to his extension of parole but taking into consideration the circumstances of the case wherein his parole is going to expire on 12.12.2019, I deem it fit not to remand back the case to the competent authority and to allow the petitioner to get extension of two weeks more commencing from 12.12.2019 subject to his surrendering before the competent authority on 12.12.2019. It is needless to say that his further

extension will be subject to the conditions which have already been imposed upon vide Annexure P-1.

A Copy of this Order be given to the learned counsel for the petitioner under the signatures of the Bench secretary of this Court.

10th December, 2019
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*