

CWP-28340-2018

[1]

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

**CWP No.28340 of 2018 (O&M)
Date of decision: March 11, 2019**

Hari Kishan

...Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Arjun Sheoran, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Divisional Commissioner, Karnal Division, Karnal dated 21.10.2018 (Annexure P-5) 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 imprisonment for twelve years in case FIR No.01 dated 01.01.2014 under Section 20 Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Sadar, Panipat after his conviction by the Special Judge. His appeal is pending before this Court.

The petitioner submitted an application to the Superintendent, District Jail, Karnal for grant of parole/temporary release for house repair. The Superintendent of Police, Sonapat reported that with the release of the petitioner

there is no danger to the security of the State but there is an apprehension that he

may abscond because of which there is apprehension of breach of peace in the village. Agreeing with the report of the Senior Superintendent of Police the District Magistrate did not recommend his release. The Naib Tehsilder Khanpur reported that the house was situated in the Lal Dora of the village and no record of ownership thereof was available in the office. However it was reported to be in the name of his mother who was residing there and was in a position to get it repaired. Based on the aforesaid and for those reason the Commissioner, Karnal Division, Karnal declined the request of the petitioner also observing that parole for house repair could only be granted if the house stands in the name of the prisoner.

Notice of motion was issued and reply by way of affidavit of Sher Singh, Superintendent of Prison, District Prison, Karnal has been filed in which the aforementioned grounds have been urged to justify the denial of parole.

The impugned order declining parole to the petitioner cannot sustain.

Vide report Annexure P-2, the Gram Panchayat of village Shamdi Buran, Sub-Tehsil Khanpur Kalan, Sonapat has reported that the petitioner has an ancestral house in the village, which is in dilapidated condition. It may cause loss of life and property at any time. There is no other member in his family except his old mother, who is incapable of getting the house repaired. Annexure P-4 is the copy of the 'Ration Card', wherein, it is shown that the family comprises of only two members – the petitioner and his mother. This clearly reveals that the petitioner and his mother reside in the house. Absent any statutory provision requiring so, the question as to whether it is the petitioner or his mother who owns the house would be immaterial to decide his claim for release on parole if

indeed the house requires repair. It is enough that it has been established that the

petitioner and his mother reside there and the house needs repair and other than the two of them there is no other member in the family. It also cannot be ignored that getting a house repaired is not a task that can be accomplished single handed. In the villages especially the entire family has to join hands whether it be by contributing labour or mere supervision. Rejection of parole on the ground that the ownership of the petitioner has not been established thus appears totally unjustified.

The ground that there is a possibility of the petitioner absconding or involving in other serious crime while released on parole, appears to be a mere apprehension in the mind of the Authority as no material has been referred to justify such apprehension. 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.

Accordingly, this petition is allowed. The impugned order is set aside. The respondents are directed to release the petitioner on parole for a period of four weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. The petitioner shall surrender before the Jail authorities on the expiry of four weeks of his release.

March 11, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No