

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

CRWP-3899-2020(O&M)

Date of decision:-22.7.2020

Rakesh @ Budha

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.J.P.Dhull, Advocate
for the petitioner.

Ms.Tanushree Gupta, DAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This criminal writ petition under Article 226 of the Constitution of India read with Section 3(1)(b) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the Act) praying for setting aside of order dated 9.4.2020 passed by Collector and grant of parole in view of the Supreme Court guidelines/Government notification has been filed by the petitioner Rakesh @ Budha, a convict in case registered vide FIR No.21 dated 10.5.2019 for the offences under Sections 332, 353, 186, 147, 149 and 333 IPC, registered with Police

Station Government Railway Police, Kurukshetra.

As per the case of the petitioner, he was convicted in the FIR in question for a period of six years by Sessions Judge, Kaithal and against the judgment of his conviction and sentence, he has filed an appeal bearing CRA-S-83 of 2020 before this Court, which has been admitted for hearing and is pending. The petitioner is behind bars since the date of his arrest in the case and has not been released on bail or parole. As per the guidelines issued by the Apex Court and notification issued by the Government, the prisoners undergoing imprisonment under seven years should be released in light of Corona Pandemic so as to avoid the spread of the disease in the jail. According to the petitioner, he had applied for parole but the same was denied by the Collector for the reason that the petitioner has another case pending against him and he may influence the witnesses. According to the petitioner, the prosecution witnesses have since been examined in that case. Furthermore, in the FIR, seven persons were convicted and out of those five were granted parole and one of them, who was granted parole, namely, Hitesh @ Shankar son of Ashok Kumar was having more cases pending against him and still he was granted parole. According to the petitioner, this Court can relax the condition under Section 4(1) of the Act in the given circumstances of a particular case. In the end, the petitioner prayed that the petition be accepted.

On being given notice, the respondents have appeared and filed written reply in the shape of affidavit of Deputy Superintendent of Police, Headquarters Kaithal refuting the averments in the petition. It has been contended that on the application of the petitioner for grant of parole

for six weeks, an enquiry was conducted by local police of Police Station City, Kaithal and it was found that the petitioner is facing trial in another case and if he is granted concession of parole, then he can threaten or induce the witnesses and indulge in committing other offences, therefore his name was not recommended for release of parole by Superintendent of Police, Kaithal. Therefore, District Magistrate, Kaithal – respondent No.3 vide order dated 9.4.2020 considered and rejected the application for grant of parole so moved by the petitioner. According to the respondents, the petitioner is involved in two more cases, details of which are as under:

(i) FIR No.402 dated 31.12.2015, under Sections 332, 34, 353, 186 IPC, PS City, Kaithal.

(ii) FIR No.1058 dated 6.12.2017, under Sections 20/29 of NDPS Act, PS City, Thanesar (Kurukshetra).

Para Nos.3 and 4 of affidavit of respondent No.2 – Jail Superintendent, Kaithal are quite relevant, which for ready reference are being reproduced as under:

3. That in compliance of orders dated 23.03.2020 of the Hon'ble Apex Court in Suo Moto Writ Petition (Civil) No.1 of 2020 IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, the High Powered Committee in its minutes of meeting dated 30.03.2020 vide Para D, issued directions which are reproduced as under:-

“D. Convict prisoners whose sentence is up to seven years (except those involved in pending multiple cases or convicted for intermediate or large quantity recovery under NDPS Act

or convicted for offence Under Section 379-B IPC or convicted under POCSO Act or convicted for rape or convicted for offence of acid attack or foreign nationals or convicted for terror related cases, cases under Anti-national activities and unlawful activities (Prevention) Act etc., but they are also convicted in multiple cases. However, already undergone/acquitted or sentenced for fine only, in all other matters and undergoing sentence in last case with no other under trial case may be released on parole for 45 days which may be extended upto 60 days.”

4. That the Hon'ble Supreme Court of India vide order dated 13.04.2020, in Suo Moto Writ Petition (Civil) No.1 of 2020 IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, clearly made it clear which is reproduced as under:-

“We make it clear that we have not directed the States/Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.”

The impugned order is defended and a prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the present criminal writ petition.

The impugned order dated 9.4.2020 passed by Collector, Kaithal, copy of which is available on the file as Annexure P-2 is quite

detailed and well reasoned. It does not come out to be suffering from any illegality or infirmity. It is clearly mentioned in the order that a meeting of High Powered committee was held under the Chairmanship of Hon'ble Mr.Justice Rajeev Sharma of this Court on 30.3.2020 and cases of the jail inmates for release on parole was considered. Since petitioner was serving imprisonment for six years and involved in other cases, he was not released on parole. The petitioner is claiming parity with his co-convicts in the FIR but there cannot be any parity for such like reason. The role played by each accused in the crime cannot be exactly identical. The nature and gravity of the offences in other cases in which such accused/convict is involved is also to be assessed independently in light of the chances of such person indulging in committing crime again, if released on parole. That subjective satisfaction is to be arrived at by the police authorities concerned and the Collector of the District. There does not come out to be any element of *mala fide* on the part of the police authorities and Collector, Kaithal in declining the request of the petitioner for grant of parole. I do not see any reason to upset the said order and to direct grant of parole to the petitioner as prayed for in the petition.

Finding no merit in the petition, the same stands dismissed.

22.7.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No