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

CRWP-3903-2020

Date of decision: 07.07.2020

Ashwani Kumar

.... Petitioner

versus

State of Haryana & ors.

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S.Dhull, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Manjari Nehru Kaul, J.

Due to the outbreak of Covid-19 pandemic, the case is taken up for hearing through video conferencing.

By way of instant petition under Article 226/227 of the Constitution of India read with Sections 3, 4 and 6 of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 the petitioner seeks a writ in the nature of certiorari for setting aside the speaking order passed by respondent No.4 whereby the petitioner has been denied the benefit of parole by ignoring the relevant rules and law pertaining to the grant of parole/furlough.

As per the affidavit filed by Deputy Superintendent, District Prison, Jhajjar on behalf of respondents No.1 to 4, the benefit of parole has been denied to the petitioner on the following two grounds:

i) the case of the petitioner falls under the category of

“hardcore prisoner” as per the provisions of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 & 2013 Section 2 (aa) (i) (3) (for short '2012 Rules') since he was convicted under Section 364-A IPC and sentenced to undergo life imprisonment.

- ii) He committed the following jail offences:
 - a) On 11.11.2017 a mobile phone was recovered from the petitioner during search for which he was awarded a major punishment of forfeiture of 12 days of earned remission.
 - b) On 21.08.2018 the petitioner failed to surrender back in jail on time after the completion of three weeks parole granted to him by the Punjab and Haryana High Court vide order dated 16.07.2018 and was late by a day for which he was awarded punishment of forfeiture of 3 days of earned remission.
 - c) On 27.09.2018 a mobile phone along with a sim card and battery were recovered from the petitioner for which he was confined in security ward for 30 days.

Learned counsel for the petitioner submits that the affidavit filed by the State clearly reveals that firstly all the alleged jail offences were committed by him prior to his last release on parole on 21.08.2019 and

secondly, he had not been involved in any offence thereafter much less any jail offence. He has further submitted that the petitioner has been granted the benefit of parole for as many as 15 times ever since his conviction under Section 364-A IPC in case FIR No.107 dated 20.10.2007 at Police Station Dhand, District Kaithal. Hence, the reason given for the denial of parole to the petitioner by the respondents stood contradicted by their own previous orders as the petitioner had been extended the benefit of parole not only ever since his conviction and incarceration on 07.12.2009 but also after the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 and 2013 came into effect.

Per contra, learned State counsel has opposed the prayer made by the learned counsel for the petitioner by contending that he is a “hardcore prisoner” and had been violating the parole rules as and when he was released on parole on previous occasions. Learned State counsel has however not been able to controvert the submissions made by learned counsel for the petitioner that he had not committed any offence much less any jail offence subsequent to his last release on parole on 21.08.2019. Further, learned counsel for the State has also conceded that the petitioner had indeed been extended the benefit of parole as many as 15 times ever since his conviction and incarceration on 07.12.2009.

Heard.

Having considered the submissions made by either side, I am of the view that the reason given by the respondent-authorities for denial of parole to the petitioner on the ground that his case fell within the category of hardcore prisoner is belied from the fact that after his conviction under

Section 364-A IPC in FIR No.107 dated 20.10.2007, he was granted the benefit of parole for as many as 15 times, which also included the grant of parole after the 2012 Rules came into effect.

As far as the misuse of parole by the petitioner is concerned, this Court while bestowing the benefit of parole in CWP No.24333 of 2018 had considered not only the 2012 Rules but also the jail offences stated to have been committed by the petitioner. In fact, while granting parole to the petitioner, this Court observed that the jail offences stated to have been committed by the petitioner could not be termed as gross misuse of parole. In this background, when nothing has been brought on record, as conceded by the learned counsel for the State as well, of the petitioner having committed any offence much less jail offence, I see no justification to deny him the benefit of parole.

Hon'ble Supreme Court in ***Asfaq vs. State of Rajasthan and others, 2018 (1) SCC (Cri.) 390*** while dealing with the question regarding parole and furlough to prisoners observed as under:

From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and

reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, al beit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

The petitioner by way of instant petition too is seeking to meet his family and restore social ties. As observed by the Hon'ble Supreme Court in Asfaq's case(supra), the parole programme should be used as a tool

to facilitate the re-entry of the offenders back into the society, who are aspiring to live as law abiding citizen, after completion of their sentence of imprisonment.

Accordingly, the present petition stands allowed. The impugned order dated 05.04.2020 is set aside and the petitioner is granted parole for four weeks from the date of release to the satisfaction of the District Magistrate concerned, who would impose such conditions as may be required to secure the presence of the petitioner in jail after the parole period is over.

07.07.2020
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes
Whether reportable?	Yes