

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

228

**CRM-W-6-2020 in/and
CRWP-2561-2019
Date of Decision : 21.01.2020**

Daljeet @ Jaljeet

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Saksham Mahajan, Advocate
for Mr. Amit Kohar, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, Asstt. A.G., Haryana
for respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ/order/ direction in the nature of mandamus directing the respondents to grant parole to the petitioner from 24.12.2017 to 17.01.2020 in view of medical emergency, in accordance with Section 3(1) (a) read with Section 5A of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

The petitioner was convicted under Sections 147, 148, 341, 332, 353, 186, 188, 435 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 33 of the Forest Act in case FIR No. 80 dated 23.02.2016 registered at Police Station Sadar Hansi, District Hisar and sentenced inter alia to undergo rigorous imprisonment of 5 years and to pay fine of Rs. 65,800/- and in default of payment of fine to further undergo R.I. for 1 year, 8 months and 15 days by learned Additional Sessions Judge, Hisar vide judgment of conviction

and order of sentence dated 28.09.2018. The petitioner filed criminal appeal bearing No. CRA-S-4014-SB of 2018 against the above said judgment of conviction and order of sentence which was admitted and ordered to be heard with CRA-S-4538-SB-2018. The petitioner was also convicted under Sections 148, 149, 302, 307, 397, 427, 436 of the IPC and Section 25 of the Arms Act, 1959 and sentenced to undergo imprisonment for life till natural death and to pay fine of Rs. 17,500/- and in case of default in payment of fine to undergo rigorous imprisonment of 5 years and 8 months in case FIR No.116 dated 23.02.2016 registered at Police Station City Hansi, District Hisar. The petitioner filed criminal appeal bearing no. CRA-D-213-DB of 2019 which was admitted vide order dated 06.03.2019.

The petitioner has filed the present petition on the averments that on 10.11.2019 the father of the petitioner felt severe pain in chest and had gone to Civit Hospital, Hansi for treatment from where he was referred to PGIMS, Rohtak for further treatment on 10.11.2019. On 11.11.2019 his mother took his father to Sapra Multi Speciality Hospital for further treatment who conducted certain tests and referred his father to PGIMS Rohtak. On 11.11.2019 his mother applied for emergency parole of the petitioner. Respondent No. 2 – the Superintendent, Central Jail, Ambala directed the concerned SHO, Police Station Sadar Hansi and Superintendent of Police, Hansi for verification who verified the facts and informed respondent No. 2 that the medical ground was genuine. S.H.O. Police Station Sadar Hansi also mentioned that he visited the petitioner's wife and brother at his house who objected to his release as he was hardcore prisoner. On the basis of said report, respondent No. 2 rejected the parole case of the petitioner. Mother of the petitioner took his father to PGIMS Rohtak where the doctor asked her to take his father to some other hospital as the facility of

Percutaneous transluminal coronary angioplasty (PTCA) was not available in the said hospital on which mother of the petitioner took his father to Sukhda Mutli-speciality hospital on 12.11.2019 where his father was referred to AIIMS, Delhi. The petitioner filed CWP No. 33210 of 2019 before this court for grant of parole which was allowed vide order dated 19.11.2019 and the petitioner was allowed parole for 4 weeks from the date of his release which ended on 17.12.2019. On 23.11.2019 the petitioner got appointment for his father for 27.11.2019 and thereafter on 03.12.2019 and 16.12.2019 on which dates tests were conducted and his father was called for 20.12.2019 for other tests. The petitioner filed CRWP No. 2060 of 2019 for grant of extension of parole from 18.12.2019 to 17.01.2020 on which notice of motion was issued for 17.01.2020. The petitioner filed application CRM-W-158 and 159 of 2019 for pre-ponement and recalling of order before this Hon'ble Court on which his parole was extended up to 23.12.2019. On 20.12.2019 after some tests his father was again called on 24.12.2019, 30.12.2019 and 08.01.2020 for tests. The brother of the petitioner is residing separately from the petitioner's family after taking his share from the family about 10 years back and has no concern with his father, mother and petitioner's family. His old mother, aged about 62 years, and his wife, having two minor children, are unable to look after his father. The petitioner is the only person in the family who is taking his father to AIIMS in Delhi. The petitioner has maintained good conduct in jail and he never misused the concession of parole. The petitioner accordingly sought grant of parole from 24.12.2019 up to 17.01.2020 in view of medical emergency.

Notice of the petition was given to the State vide order dated 26.12.2019. In view of verification of facts by respondent-State regarding treatment of his father in AIIMS, New Delhi, the petitioner was granted parole

from 27.12.2019 to 09.01.2020 by Coordinate Bench of this Court. The petitioner filed application CRM-W-6-2020 for extension of parole from 10.01.2020 to 31.01.2020. Vide order dated 09.01.2020 passed by this Court, his parole was extended till 17.01.2020. Even though his parole was further extended vide order dated 17.01.2020 till forenoon of 22.01.2020 subject to order to be passed on 21.01.2020 but the petitioner surrendered before the Superintendent of the concerned Jail on 17.01.2020. In respect of the prayer for grant of parole upto 17.01.2020, the petition has become infructuous. However, the petitioner is now seeking grant of parole till 31.01.2020 and even thereafter in view of prayer for additional relief made in the petition and the application.

The petition has been opposed by respondents in terms of reply filed by way of affidavit of Lakhbir Singh, Superintendent, Central Jail, Ambala on behalf of respondents No. 1 to 3. In the reply respondents have submitted that the petitioner is facing trial in 13 cases in which he is on bail while the petitioner was also involved in 40 other cases out of which he was acquitted in 38 cases and convicted and sentenced to the period already undergone in 2 cases. The petitioner had applied for furlough which was declined by the Divisional Commissioner vide order dated 06.12.2019 (Annexure R-1). The mother of the petitioner sent application for grant of emergency parole on the ground of illness of his father which was declined vide order dated 13.11.2019 (Annexure R-2). The petitioner falls in the category of hardcore criminal in view of his conviction under Sections 397 and 420 of the IPC in case FIR No. 116 dated 23.02.2016 registered at Police Station City, Hansi. The petitioner has not completed five years of imprisonment after becoming hardcore prisoner after his conviction in the above said case as required for initiation of parole case as per the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2015. The S.H.O. concened

had reported that the brother of the petitioner and other family members of the petitioner are capable to take care of the father of the petitioner and that the petitioner is habitual of committing heinous crimes again and again and if he is released then he may commit crime again. There was also strong apprehension of disturbance of peace in the village. Vide order dated 19.11.2019 passed in CWP 32210 of 2019, the petitioner was allowed parole which was extended up to 23.12.2019. The petitioner surrendered on the due date in time. The petitioner was again granted parole vide order dated 27.12.2019 in CRWP No. 2561-2019 which was extended up to 17.01.2020. There is no provision for extension of parole. In CWP No. 483 of 2012 the Division Bench of this Court has held that if the statutory rules impose a legal bar on consideration of the case of the petitioners for temporary release, the same ought not to be overcome by a judicial order. Therefore, the application may be dismissed.

I have heard learned Counsel for the petitioner and learned State Counsel and perused the record.

Learned Counsel for the petitioner has submitted that on expiry of the period of previous parole, the petitioner surrendered as directed. The petitioner has maintained good conduct in jail and he never misused the concession of parole. The petitioner is the only one in the family to look after his father for his medical treatment. In view of medical emergency, the petitioner may be granted parole upto 31.01.2020.

On the other hand, learned State Counsel has argued that the petitioner is a hardcore prisoner. The father of the petitioner can be looked after by other members of family i.e. his brother, mother and wife. In view of the absence of any provision for extension of parole and the statutory provisions imposing legal bar on release of hardcore prisoner on parole, the petition may be

dismissed.

Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which provides for temporary release of prisoners on certain grounds, reads as under :-

“3. Temporary release of prisoners on certain grounds:-

(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 the prisoner himself 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 ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or
- (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 ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and
- (c) 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.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, exercise its powers under this section in respect of all or any other ground specified thereunder.”

Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which makes special provision for temporary release of hardcore prisoners provides as under :

“5A. Special Provisions for temporary release of hardcore prisoners :-

Notwithstanding anything contained in sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough :

Provided that a hardcore prisoners may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned superintendent of Jail:

Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty-four hours, the concerned District Magistrate and superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.

(2) Notwithstanding anything contained in sub-section (1) a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge :

Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

The petitioner was, under order dated 19.11.2019 passed in CWP No.33210 of 2019 and order dated 13.12.2019 and 17.12.2019 passed in CRWP-2060-2019 and CRM-W-158-2019 in CRWP-2060-2019 by the Co-ordinate Benches of this Court, granted parole from **20.11.2019 to 23.12.2019**. Subsequently, the petitioner was, under order dated 27.12.2019 passed by the Co-ordinate Bench in CRWP-2561-2019 and order dated 09.01.2020 passed by this Court on CRM-W-6-2020 in CRWP-2561-2019, granted parole from **27.12.2019 to 17.01.2020**. Even though his parole was extended vide order dated 17.01.2020 up to 21.01.2020 but the petitioner had already surrendered on 17.01.2020. Under Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 the period of temporary release of the petitioner could not exceed 3 weeks. The petitioner has already availed parole for a longer period. The treatment of his father is likely to continue over a long period and the petitioner

can not be granted parole for such a long period. During such treatment his father can also be looked after by his brother, mother and wife. Even if his brother had separated from his father, even then his brother will be under statutory obligation to maintain and look after his father.

Further, Section 5 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 imposes restrictions on temporary release of hardcore prisoner. In CRWP No. 483 of 2012 Hon'ble Division Bench of this Court has held as under :

“If the statutory rules impose a legal bar on consideration of the case of the petitioners for temporary release under the aforesaid Act, the same ought not to be overcome by a judicial order.”

In these facts and circumstances there is no sufficient cause for extension/grant of parole to the petitioner upto 31.01.2020 or any further date on the ground of medical emergency for treatment of his father and the petition and the application qua the same are liable to be dismissed.

The petition and the application are dismissed accordingly.

21.01.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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