

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *December 14th, 2021*

1.

Criminal Writ Petition No.664 of 2021

Harpreet Singh

..... PETITIONER(S)

VERSUS

State of Punjab & others

..... RESPONDENT(S)

. . .

2.

Criminal Writ Petition No.20 of 2021

Gurminder Singh

..... PETITIONER(S)

VERSUS

Union of India & others

..... RESPONDENT(S)

. . .

3.

Criminal Writ Petition No.2487 of 2021

Gurmej Singh

..... PETITIONER(S)

VERSUS

Union of India & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. Ruhani Chadha, Advocate, for the petitioner in Crl. Writ Petition No.664 of 2021.

Mr. J.S. Kinra, Advocate, for Mr. L.S. Sidhu, Advocate, for the petitioner in Criminal Writ Petition No.20 of 2021.

Mr. Inderjeet Singh, Advocate, for the petitioner in Criminal Writ Petition No.2487 of 2021.

Mr. Tanvir Joshi, Assistant Advocate General, Punjab.

Mr. Satya Pal Jain, Additional Solicitor General of India with Mr. Dheeraj Jain, Senior Panel Counsel for respondent No.2 – Union of India in Crl. Writ Petition No.664 of 2021; for respondent Nos.1 and 2 in Crl. Writ Petition Nos.2487 & 20 of 2021.

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Sant Parkash, J

This judgment shall dispose of afore-mentioned three criminal writ petitions as they involve similar questions of law.

Crl. Writ Petition No.664 of 2021

This petition has been preferred under Article 226 of the Constitution of India read with Section 3(1)(c) & (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, '1962 Act') and Article 10 of the Agreement between the Government of United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India and the Transfer of Sentenced Persons (for short, 'Indo-UK TSP Agreement') for issuance of a writ in the nature of mandamus directing the respondents to release the petitioner for four weeks emergency parole to enable him to perform his own marriage which is scheduled to be fixed for 05.12.2021.

Succinctly, petitioner was involved in a murder case in United Kingdom wherein he was sentenced to life imprisonment by the Central Criminal Court, London vide order dated 15.04.2011 (Annexure P-2). Since the petitioner is a citizen of India, his case was moved by the Union of India for repatriation to India in view of Indo-UK TSP Agreement which was accepted by the UK Government. After transfer, petitioner is confined in Central Jail, Jalandhar at Kapurthala.

Earlier the marriage of petitioner was fixed for 29.03.2021 with one Maninder Kaur daughter of Manmohan Singh. Petitioner approached the Jail Superintendent for parole alongwith marriage card and panchayatnama but the application was not decided.

State of Punjab has filed reply dated 16.02.2021 wherein it is submitted that the petitioner was convicted and sentenced by the Central Criminal Court, London vide order dated 15.04.2021 and the Court has ordered the petitioner to serve life imprisonment with a minimum term of 22 years less 354 days spent in remand. Petitioner was transferred to India vide Indo-UK TSP Agreement which was signed under the Repatriation of Prisoners Act, 2003 (for short, '2003 Act'), as per the provisions of which, Union of India is designated authority which would be competent to consider any application/proceeding regarding temporary or permanent release of the transferred prisoners, whereas the State authorities are merely the custodian of such convict he being located/placed in a jail within the territorial jurisdiction of the State of Punjab. The limited role of a State authority/designated officer is to '*receive and hold in custody*' under Section 13 of the 2003 Act. As per the sentence order, the petitioner can be released only after undergoing 22 years of sentence. As per Article 8 of the Indo-UK TSP Agreement dated 21.11.2005, the receiving State is bound by the legal nature and duration of sentence as determined by the transferring State.

Further, State of Punjab has filed a short reply dated 01.12.2021 submitting that for the purpose of verification of the facts mentioned in the petition, ASI Gajjan Singh has conducted enquiry wherein he has recorded statements of various persons including Maninder Kaur with whom the marriage of petitioner is to be solemnized. Marriage card was produced before the Investigating Officer and it has emerged that shagun ceremony of petitioner is scheduled to be solemnized with Maninder Kaur on 04.12.2021 and marriage is scheduled to be solemnized on 05.12.2021.

Learned counsel for Union of India has submitted reply dated 10.12.2021 contending that the issue of allowing parole to persons transferred to India under the bilateral TSP agreements with foreign countries by the State authorities where these prisoners are lodged on transfer to India was reviewed by the Government of India in light of a communication received from the Government of United Kingdom (UK) in August 2020 raising the issue of temporary release of prisoners transferred from United Kingdom to India under the bilateral agreement on TSP in which they had stated that early and frequent release of prisoners undermines the spirit of the agreement. Life sentence prisoners in England and Wales are usually not eligible for temporary release from prison (parole/furlough in Indian context) until they move to open prison conditions, which happens approximately 2 years prior to the 'minimum term' expiry date. A view was therefore taken that the State Government's parole rules would not apply to the prisoners transferred to India under the Union of India agreement on TSP with foreign countries. In view of the evolving situation of objections being raised by the partner country on the issue of granting frequent parole to prisoners transferred to India, the Union of India has revised its stand indicated in the administrative instructions provided to the Central Government counsel vide letter dated 04.08.2020 (Anenxure A-I).

Crl. Writ Petition No.20 of 2021

This petition has been filed with a prayer that petitioner may be ordered to be released on parole for eight weeks for repair of his house in view of Section 3(1)(d) of the 1962 Act.

The Crown Court of Wolverhampton vide order dated 23.09.2014 convicted the petitioner for the crime of murder and sentenced him for imprisonment for life. While undergoing his sentence at HMP Gartree Cat B Training Prison at UK, petitioner being an Indian National submitted an application to Her Majesty's Prison and Probation Service, London, for a possible transfer to India which was referred to Government of India for consideration vide communication dated 23.01.2018 (Annexure P-4). The Government of India, Ministry of Home Affairs, vide letter dated 16.07.2018 (Annexure P-5) informed the British High Commission regarding approval of the competent authority for transfer of petitioner to India to serve the remaining sentence under the Indo-UK TSP Agreement. The date of transfer was agreed as 25.09.2018. After various communications, petitioner was transferred to Central Jail, Ludhiana on 25.09.2018, who is presently lodged in Central Jail, Jalandhar at Kapurthala.

It is pleaded in the petition that petitioner's father namely Nirmal Singh has already died. His younger brother namely Jatinder Singh also died 2 years back. His sister Mandeep Kaur is married abroad. His mother Rajinder Kaur also went abroad to live with her daughter. In the absence of any member, the condition of petitioner's house started deteriorating. Accordingly, paternal aunt of petitioner namely Balwinder Kaur moved an application dated 14.09.2020 with Jail Superintendent, Central Jail at Kapurthala for releasing the petitioner on parole for undertaking the repair of his house, however, no decision has been taken on the same.

Reply has been filed by State of Punjab taking preliminary submissions that petitioner was convicted and sentenced for life

imprisonment by order of the Crown Court at Wolverhampton vide order dated 23.09.2014 and the court has ordered that pursuant to Section 269 of the Criminal Justice Act 2003, the petitioner has to serve a minimum tariff of 24 years less 181 days whilst on remand before he can be considered for release on parole licence. Rest of the pleas were reiterated as had been taken in reply to Crl. Writ Petition No.664 of 2021.

Crl. Writ Petition No.2487 of 2021

This petition has been filed with a prayer that petitioner may be ordered to be released on parole for eight weeks for repair of his house in view of Section 3(1)(d) of the 1962 Act.

The petitioner was involved in a murder case in United Kingdom wherein he was convicted and sentenced to undergo imprisonment for life by the Crown Court at Birmingham vide order dated 21.02.2006 (Annexure P-1). Petitioner being a citizen of India, his case was moved by the Union of India for repatriation to India in view of Indo-UK TSP Agreement which was accepted vide letter dated 10.05.2012 (Annexure P-2). During his tenure of sentence in India, petitioner has availed 9 paroles, each of eight weeks and re-admitted in jail in time. Last case of the petitioner for parole was not processed by the jail authorities, hence the present petition.

Pursuant to notice of motion, respondent Nos.1 and 2 have filed reply submitting that petitioner has already filed another petition in this Court seeking parole for solemnizing his marriage i.e. Crl. Writ Petition No.5327 of 2020 which has already been opposed by the Union of India, which fact has not been disclosed by the petitioner in the present petition.

Over the past few years, several Indian nationals have been transferred from

United Kingdom to India and vice-versa, and are serving the remainder of their sentence in their native countries. Petitioner Gurmej Singh was convicted for the crime of brutally murdering his wife and her family by burning them alive in United Kingdom on 27.09.2004 to continue his affair with another woman. In view of the gravity of crime committed by the petitioner, the minimum term was set at 35 years while awarding him life sentence, which will expire in 2040. The UK authorities had informed the Government of India that life sentence prisoners in England and Wales are usually not eligible for temporary release from prison until they move to open prison conditions which happens approximately 2 years prior to the minimum term expiry date. Moreover, since the petitioner's transfer to India on 15.05.2015, he has already availed parole on 9 occasions for one reason or another. The ground seeking parole i.e. repair of house, does not fall in the category of exceptional or compelling circumstance.

Learned counsel for the petitioners have contended that under the provisions of Section 3 of 1962 Act, the District Magistrate has the jurisdiction to release the prisoners on parole. As per Section 6 of the Act *ibid*, parole can be declined only if the authorities are satisfied that the release of the convict is likely to endanger the security of the State or maintenance of public order. The petitioners are not habitual offender.

Learned counsel for the respondents have stated that petitioners had been convicted by a Court in United Kingdom and sent to India to undergo the sentence, as such, English law would be applicable to them, in terms of which, they cannot be granted any parole within two years of the last leg.

Learned senior counsel has submitted that as per 2003 Act, Union of India is designated authority which would be competent to consider any application/proceeding regarding temporary or permanent release of the transferred prisoners, whereas the State authorities are merely the custodian of such convict he being located/placed in a jail within the territorial jurisdiction of the State of Punjab. The limited role of a State authority/designated officer is to ‘receive and hold in custody’ under Section 13 of the 2003 Act. As such, petitioners are not liable to be released on parole and the petitions should be dismissed.

I have heard learned counsel for the parties and perused the record.

The question in all the three petitions is that whether the benefit of parole would be available to the petitioners convicted by the courts outside the country and later on transferred to India to serve the remaining sentence as per Indo-UK Agreement.

Before proceeding with the judgment, relevant provisions of Section 13 of the 2003 Act are reproduced hereunder:-

“13. Determination of prison and issue of warrant for receiving transfer in India.— (1) The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government where the prisoner with respect to whom a warrant has been issued under sub-section (2) of section 12, shall be lodged and the officer who shall receive and hold him in custody.

(2) The Central Government shall authorise any officer not below the rank of a Joint Secretary to that Government to issue a warrant under sub-section (2) of section 12 and to direct the officer referred to in sub-section (1) to receive and hold the prisoner, with respect to whom the warrant is issued, in custody.

(3) It shall be lawful for the officer referred to in sub-section (1) to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (2) of section 12 and to convey such prisoner to any prison determined under sub-section (1) for being dealt with in accordance with the said warrant and

if the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer incharge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable to be dealt with in accordance with the said warrant.

(4) A warrant under sub-section (2) of section 12 shall provide for—
(a) the bringing of the prisoner into India from a contracting State or a place outside India; (b) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant; (c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred to in sub-section (1) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and (d) any other matter which may be prescribed.

(5) Notwithstanding anything contained in any other law for the time being in force, the imprisonment of a prisoner in compliance with a warrant issued under sub-section (2) of section 12 shall be deemed to be imprisonment under a sentence of a court competent to pass such a sentence of imprisonment in India.

(6) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India: Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both in relating to the sentence imposed in the contracting State.”

Further, Section 3 of the 1962 is reproduced as under:-

“3. Temporary release of prisoners on certain grounds. - (1) The State Government may, in consultation with the District Magistrate 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 has died; or

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or

(b) the marriage of the prisoner'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 and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence;

(cc) a lady prisoner is pregnant and is likely to deliver a child; or

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

[Explanation. - The expression "sufficient cause" includes –

- (1) serious damage to life or property of the member of the family caused by any natural calamity; or
- (2) critical condition of any member of the family on account of accident; or
- (3) delivery of child by the wife of the prisoner.

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4. Temorary relase of prisoners on furlough.- (1) The State Government or any other officer authorised by it in this behalf may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than five years, and who -

- (a) has, immediately before the date of his temporary release undergone imprisonment for a period of three years, excluding remissions; and
- (b) has not during such period committed any jail offence and has earned at least three annual good conduct remissions:

Provided that nothing herein shall apply to a prisoner who –

- (i) is a habitual offender as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, or
- (ii) has been convicted of robbery or dacoity or such other offences as the State Government may, by notification, specify.

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8 the period of release referred to in sub-section (1) shall count towards the total period of sentence of a prisoner.

Articles 7, 8 and 10 of Indo-UK TSP Agreement are very relevant and also reproduced below:-

“ARTICLE 7

Effect of transfer for the receiving State 1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement. 2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence 1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. 2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring.

ARTICLE 10

Pardon, amnesty or commutation, and Review of Judgment 1. The transferring State alone shall decide on any application for the review of the judgment. 2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.”

Referring to Part 2 of Article 7, learned counsel for the petitioners vehemently argued that the enforcement of sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions. He submitted that it is the receiving State only which has to take the decision with regard to the enforcement of sentence and also in view of Article 10, reproduced above, either of the contracting States have been empowered to grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

This submission of learned counsel for the petitioners is totally misplaced. First of all, provisions as contemplated in Article 7 are subject to the provisions of Article 10 and only the enforcement of sentence has been ordered to be governed by law of receiving State. Article 10 further stipulates as to what power has been bestowed upon the transferring State. If glanced through, Article 10 would make it evidently clear that either of the contracting States are empowered to grant pardon, amnesty or commutation of sentence in accordance with its Constitution or other laws. The words ‘parole’ or ‘furlough’ have been purposely and intentionally omitted from

the said clause because in the eyes of law as prevalent in UK, the temporary release of prisoners on furlough or parole should be in consonance with the provisions of the law prevalent in the transferring country. According to the law of the transferring country, the said concession should not be extended to prisoners until they move to open prison conditions, which happens approximately 2 years prior to the 'minimum term' expiry date.

The petitioners have been transferred to India after having been convicted by the courts in UK under the Indo-UK TSP Agreement and by way of moving the present petitions, they cannot be allowed to blow hot and cold in same breath as they came to India under the Treaty and now they are impressing upon that law of prison in India (1962 Act) should be made applicable to them.

Moreover, it is clear from the aforesaid reproduced provisions of 1962 Act as also Indo-UK TSP Agreement that parole cases of the petitioners repatriated from UK and other foreign countries are to be considered as per the provisions of Agreement of Repatriation arrived at between the concerned foreign country and Government of India. Thus, irresistible and unerring conclusion can be drawn that parole cases of the petitioners are to be governed by the terms & conditions of the Indo-UK Agreement.

As per the sentence order, the petitioners can be released only after undergoing minimum prescribed sentences. Further, as per Article 8 of Indo-UK TSP Agreement, the receiving State is bound by the legal nature and duration of the sentence as determined by the transferring State.

In other words, the State authorities are merely the custodian of such convict

he being located/placed in a jail within the territorial jurisdiction of the State of Punjab. The limited role of a State authority/designated officer is to ‘receive and hold in custody’ under Section 13 of the 2003 Act.

The communication dated 04.08.2020, placed on file as Annexure A-I, relates to Transfer of Sentenced Persons (TSP) Agreement between India and Sri Lanka, to serve the remainder of sentence in Indian prison(s) with a specific recital that “*the enforcement of sentence shall be governed by the law of the receiving State i.e. India*”. But this clause cannot be made application in the case of bilateral agreement between UK and India. It is evidently clear from the reply filed on behalf of Union of India that since agreement on transfer of sentenced persons is entered into at the level of Union Government with a foreign country, appropriate authority in all cases would be the Union Government and the rules of State Governments would not apply to persons transferred under the Union of India agreement as it is the Central Government who has to honour and take care of the sensitivities involved in the bilateral relations with the foreign country.

Moreover, in order to maintain the balance in overall international harmony and to honour the bilateral agreement/treaty and to avoid negativity in the relationship between the countries, in my considered view, this Court should refrain from passing any such order which would result into making any dent in the harmonious relationship between the two countries. As it is evident from the reply filed on behalf of the Government of India by way of an affidavit dated 09.12.2021, sworn by Arun Sobti, Deputy Secretary to the Government of India, Women Safty Division, Ministry of Home Affairs, Major Dhyan Chand National Stadium, India

Gate, New Delhi, the Government of UK has placed on hold the requests of transfer of prisoners to India with regard to the persons undergoing imprisonment there.

Taking into consideration the totality of circumstances explained above, finding no merit in all the three petitions, the same are hereby dismissed holding that provisions of Sections 3 & 4 of the 1962 Act would not be applicable in the instant petitions.

**(Sant Parkash)
Judge**

December 14th, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No