IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.1597 of 2021
Date of Decision: February 25, 2021

Dharambir

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ravinder Bangar, Advocate
for the petitioner.

Mr.Hitesh Pandit, Addl. Advocate General, Haryana
for the respondent-State.

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ARCHANA PURI, J.

The petitioner has invoked the writ jurisdiction of this Court, thereby making prayer for issuance of a certiorari for quashing the impugned order dated 08.01.2021 (Annexure P-1) and also sought mandamus for directing the respondents to release the petitioner for four weeks parole for school admission of his children.

It is averred that the petitioner has been convicted and sentenced for life imprisonment in case FIR No.99 dated 20.09.2011 under Sections 148, 149, 452, 323, 307, 302, 506 IPC and Section 25 of the Arms Act, Police Station Chhachhruali, District Yamuna Nagar. The petitioner filed an appeal bearing No.CRA-D-1732-DB-2015 in this Court and the same is admitted. Presently, the present petitioner is confined in District

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Jail, Yamuna Nagar. The petitioner had approached concerned authorities for seeking four weeks' parole for school admission of his children, which is due in the month of March, 2021. However, the authorities have rejected the case of the petitioner because last time, when the petitioner was released on parole, two FIRs were registered against him. Further, it is averred that both the FIRs were politically motivated and registered against the petitioner intentionally, so that he could not obtain parole. Also, it is averred that petitioner's case is covered under Section 3(1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and Rule 8(i) of the Haryana Good Conduct Prisoners (Temporary Release), Rules, 2007. It is further averred that the petitioner had earlier availed parole on different occasions and every time, he had surrendered in time. As such, a prayer has been made for quashing of the order dated 08.01.2021 and further to direct the respondents to release the petitioner on four weeks' parole.

Notice of motion was issued. Learned State counsel appeared and even filed the reply, which is in the form of affidavit of the Deputy Superintendent, District Jail, Yamuna Nagar. The preliminary submissions have been made that Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, has been enacted to provide parole to the convicts for their good conduct but on certain conditions. It is also averred in the reply that benefit of parole/farlough is only a concession given by the State Government and a prisoner cannot claim it, as a matter of right. The petitioner was earlier released on six weeks' parole on 19.02.2020 and was directed to surrender himself on 02.04.2020. However, the petitioner was lodged in jail on 10.03.2020 by the local police, on account on registration of two FIRs

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against him i.e. before 23 days of his surrender. The details of the FIR, so registered, during the parole period, have also been given in the reply. Further, it is averred that the petitioner has violated the parole rules and also breached terms and conditions, laid down in the surety bonds, furnished by the petitioner, before release on parole, in case FIR No.99 dated 20.09.2011, under Sections 148, 149, 452, 323, 307, 302, 506 IPC and Section 25 of the Arms Act, Police Station Chhachhrauli, Yamuna Nagar and the two FIRs, registered against him, during parole period, are still pending. It is also averred that petitioner is habitual offender and a gangster.

In view of the aforesaid facts, it is averred that Divisional Commissioner, vide order dated 08.01.2021, had rejected the application of the petitioner for grant of parole. Even, reliance has been placed upon the judgment passed by this Court in ***CWP No.10236 of 2018*** titled as '***Virender @ Dhillu vs. State of Haryana and others***', decided on 26.04.2018. On merits, on same terms, as stated aforesaid, the claim for parole, as such, has been resisted by the State.

We have heard learned counsel for the petitioner as well as learned State counsel and with their able assistance, have perused the record.

At the very outset, it is important to make reference to the decision rendered in ***Virender @ Dhillu's case (supra)***, wherein, it has been observed, as herein given:-

> *"The remission and parole are not the vested rights of the prisoners. In fact, these are privileges granted by the State to the convicted prisoners. Therefore, a convict prisoner cannot claim these two privileges as his vested rights. There is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under*

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> *the Constitution, or a statutory right granted by the Statute. On the other hand, a privilege is granted by the State under certain conditions and can equally be taken away by the State. The privilege can be given on certain specific grounds. Parole is a part of reformative theory of punishment. It is not necessary that all the convicts must have the privilege extended to them. These benefits can be refused in case refusal is based on intelligent differentia and has a nexus to the object of the Rules. A refusal cannot be violative of Article 14 of the Constitution of India. A prisoner may be released temporarily by an officer appointed in this behalf by the State Government in case it is desirable for a sufficient cause. However, it is relevant to mention here that the parole can be granted twice in a year."*

In this backdrop, now reference is made to the relevant provision of the *ibid* Act. Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, 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 subsection (2), any prisoner, if the State Government is satisfied that –*
> …….
>
> *(d) it is desirable to do so for any other sufficient cause."*

Section 10 provides as under:-

> ***"10. Power to make rules.** The State Government may, by notification, by notification make rules for carrying out the purposes of this Act.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—*
> ……
> *(d) the conditions on which and the manner in which prisoners may be released temporarily under this Act."*

Rule 8 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, reads as under:-

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> *"**8. Sufficient cause. sections 3(1)(d) and 10(2)(d)**. - Under section 3(1)(d) "sufficient cause" may be considered from amongst the following reasons, namely:-*
> .....
> *(i) admission in school/colleges/professional institutions of the dependents of the convict;*

It is evident that the petitioner has sought parole, while seeking coverage of his prayer under clause (1) (d) of Section 3 of *ibid* Act read with Rule 8 clause (i) of Rules 2007.

The perusal of the impugned order dated 08.01.2021 (Annexure P-1) reveals that the Commissioner, Ambala Division, had considered the case of the petitioner for parole of four weeks, for the purpose of school admission of his children. However, Superintendent of Police, Yamuna Nagar, had stated in the report that prisoner (petitioner) is undergoing imprisonment for life with fine of ₹19,000/- in case FIR No.99 dated 20.09.2011 under Sections 148, 149, 452, 323, 307, 302, 506 IPC and Section 25 of the Arms Act, Police Station Chhachhrauli. The local police had objection in granting four weeks' parole to the said prisoner because against him, other cases have been registered, the details whereof, are as herein given:-

1. *FIR No.147 dated 20.03.201 under Sections 307 and 34 IPC, Police Station City Jagadhri.*
2. *FIR No.54 dated 08.03.2020 under Section 148, 149, 323 and 506 IPC, Police Station Chhachhrauli.*
3. *FIR No.55 dated 09.03.2020 under Section 25 of the Arms Act, Police Station Chhachhrauli.*

It is also mentioned that FIRs No.54 and 55 were registered against the petitioner, while he was on earlier parole and on this account, Incharge, Police Station, had not recommended for parole. Considering the

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same, it was observed by the concerned authority that the prisoner (petitioner) did not behave good, during his earlier parole and disturbed social peace and thus, agreeing with the report of District Magistrate, Yamuna Nagar, the case of temporary release of the petitioner had been rejected, due to his behaviour.

The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, was enacted for temporary release of the prisoners, on account of their conduct but on certain conditions. The name of the Act itself suggests that in order to earn temporary release, the prisoner has to maintain good conduct, during his stay in the prison and furthermore, he has a duty to behave properly during the period of parole and also he is not supposed to disturb social peace.

However, it is evident that while the petitioner enjoyed his earlier parole, which was granted on 19.02.2020 and was to surrender on 02.04.2020, FIR No.54 dated 08.03.2020 under Section 148, 149, 323 and 506 IPC and FIR No.55 dated 09.03.2020 under Section 25 of the Arms Act, Police Station Chhachhrauli, had been registered against the petitioner during his parole period and the aforesaid cases are still pending in the Court. It was only on account of registration of the two FIRs that petitioner was lodged in the jail, prior to his surrender date. It is, though, mentioned in the petition in paragraph No.7 that the petitioner had earlier taken parole on different occasions from 28.10.2016 to 28.11.2016, 29.05.2017 to 20.06.2017 and 10.10.2017 to 08.11.2017 and every time, he surrendered in time but however, there is no mention made about the last parole availed on 19.02.2020 and the manner of his again entering into the jail, on account of registration of two FIRs. As such, it is evident that the petitioner, during the

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period of concession of parole, having granted to him, had violated the parole rules and had also breached the terms and conditions laid in the surety bonds, furnished by the petitioner, before his release on parole in case FIR No.99 dated 20.09.2011 under Sections 148, 149, 452, 323, 307, 302, 506 IPC and Section 25 of the Arms Act, Police Station Chhachhrauli and now, the present petition has been filed, for seeking parole in the same FIR.

In the given circumstance, it is evident that the petitioner, as such, is not trustworthy. During the period of his earlier parole, he has flouted the concession of parole, so granted to him and thus, considering his earlier conduct and behaviour, it cannot be concluded that social peace, as such, will not be disturbed by him again.

Thus, in view of the aforesaid facts and circumstances, we do not find it a fit case for releasing the petitioner on parole. Consequently, the present petition is hereby dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

February 25, 2021
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Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**

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