

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

CRWP No.5459 of 2021
Date of decision: 08.07.2021

Jitender @ Jeeta

...Petitioners

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Rahul Deswal, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana.

Ritu Bahri, J. (Oral)

This petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. and Section 3 (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') is for quashing of the impugned order dated 13.05.2021 (Annexure P-1) and to release the petitioner on parole for four (04) weeks to enable him to carry out necessary repairs of his house, which is in a dilapidated condition.

The petitioner was convicted in case FIR No.427 dated 15.10.2010 and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- for commission of offence under Section 302 IPC. He was further sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.1000/- for commission of offence punishable under Section 25 of the Arms Act. Both the sentences were ordered to run concurrently. Presently, he is undergoing imprisonment in District Jail, Faridabad. Earlier also, FIR No.230/2007 was registered against the

petitioner under Sections 420/467/468/120-B IPC at Police Station, DLF, Phase-II, Gurgaon. In that case, the petitioner was acquitted vide judgment dated 31.07.2014.

The petitioner made an application before the Superintendent, District Jail, Faridabad-respondent No.3 for initiating his case for release on house repair parole. However, vide order dated 13.05.2021 (Annexure P-1), his case has been rejected keeping in view the report of Superintendent of Police, Jhajjar as well as the District Magistrate, Jhajjar, who had not recommended the case of the petitioner as there was apprehension of breach of peace in the village, if he is released on parole.

Learned counsel for the petitioner has placed on record copy of letter/report dated 17.03.2021 (Annexure P-2), sent by the District Magistrate, Jhajjar to the Commissioner, Faridabad Division, Faridabad, wherein reference has been made to a report of the Executive Engineer, PWD (B&R), Jhajjar, stating that house of the convict (petitioner) requires repair. Learned counsel has further referred to a report (Annexure P-4) submitted by the Sarpanch, Gram Panchayat, Chhara, District Jhajjar, wherein it has been stated that the petitioner has one old mother and except him (petitioner), there is no other person to look after her. His house is in a dilapidated condition. As per this report, the Gram Panchayat has recommended the release of petitioner on parole. It has been specifically stated that there was no apprehension of breach of peace in the village on his arrival. Photograph of the house of petitioner has been annexed as Annexure P-5.

Upon notice, reply on behalf of respondents, by way of an affidavit of Deputy Superintendent, District Jail, Faridabad, has been filed

through email. In para No.3 of preliminary submissions, details of other decided case against the petitioner have been given, which are reproduced as under:-

- “1. FIR No.49 dated 10.02.2015, under Sections 8/9 of HGCP Act, P.S., Sadar Bahadurgarh, convicted on 18.05.2018 by the Ld. Court of Ms. Mansi Dhiman, Judicial Magistrate, First Class, Bahadurgarh and sentenced to undergo 6 months RI and to pay a fine of Rs.1000/- (fine paid). **This sentence shall be in addition and shall run consecutively to the substantive sentence awarded in case FIR No.427/2010.**
2. FIR No.230/2007, under Sections 420/467/468/120-B IPC, P.S. DLF-II, Gurugram- Acquitted by Ld. Court of Ms. Seema, Judicial Magistrate, First Class, Gurugram on 31.07.2014.
3. FIR No.52/2008, under Sections 323/452/506/34 IPC, P.S. Jhajjar- Acquitted by the Ld. Court of Sh. Munish Nagar, Judicial Magistrate, First Class, Jhajjar on 10.06.2013.
4. FIR No.627 dated 30.11.2009, under Section 160 IPC, P.S. Jhajjar- Convicted on 19.04.2012 and sentenced as already undergone by the Ld. Court of Sh. Ishwar Dutt, Judicial Magistrate, First Class, Jhajjar.
5. FIR No.268 dated 24.05.2010, under Sections 25/54/59 Arms Act, P.S. Jhajjar- Convicted on 22.11.2012 and sentenced as already undergone by the Ld. Court of Ms. Kumud Gugnani, Chief Judicial Magistrate, Jhajjar.
6. FIR No.476 dated 31.08.2009, under Sections 148/149/423/329/324 IPC, P.S. Jhajjar- Acquitted on 22.09.2010 by the Ld. Court of Sh. Devender Singh, Additional Sessions Judge, Jhajjar.
7. FIR No.103 dated 23.06.2008, under Sections 302/323/34 IPC, P.S. Farrukh Nagar, Gurugram- Acquitted on 08.05.2009 by the Ld. Court of Sh. B.L. Singla, Additional Sessions Judge, Gurugram.
8. FIR No.17 dated 13.01.2007, under Section 387/34 IPC, P.S. Jhajjar.

It is stated that on 08.01.2015, the petitioner was released for three weeks furlough. He was to surrender on 30.01.2015, but he did not surrender on due date and absconded from furlough. In this backdrop, FIR No.49 dated 10.02.2015, under Sections 8/9 of HGCP Act, was registered against the petitioner at Police Station, Sadar Bahadurgarh. In that case, he

was convicted and sentenced to undergo rigorous imprisonment for a period

of six (06) months and to pay a fine of Rs.1000/-. He was arrested and lodged back in jail on 13.10.2015. He remained absconded from his last furlough for a period of 08 months and 13 days. Now, he falls in the category of hardcore prisoner as per Section 2 (aa) (v) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 (for short '2013 Act'), which is reproduced as under:-

“(v) who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on expiry of the period for which he was release earlier under this Act.”

It is further stated that the petitioner has undergone the treatment for pulmonary tuberculosis positive (MTB detected and rifampicin resistant) w.e.f. 03.06.2019. He was found negative on 08.08.2019. He had completed his dots regime on 14.12.2019. Now, he has recovered from pulmonary tuberculosis. In this regard, medical report dated 03.07.2021 qua the condition of petitioner has been annexed as Annexure R-1. A perusal of this report shows that now, his condition is stable.

Learned State counsel has argued that case of the petitioner has been rightly rejected. As per custody certificate dated 05.07.2021, petitioner has undergone 06 years, 11 months and 15 days in custody after conviction. Actual period undergone by the petitioner, including custody as undertial, is 09 years, 10 months and 13 days. By including remission, petitioner has undergone total 12 years, 03 months and 18 days in custody. Learned State counsel has further argued that as per Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (Annexure R-3), the petitioner is a prisoner, who is not entitled to be released on parole, if on the report of District Magistrate, the State

release is likely to endanger the security of the State or the maintenance of public order. Section 6 of this Act is reproduced as under:-

“6. Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act, if, on the report of the District Magistrate, the State Government or an officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order.”

Mr. Ankur Mittal, Addl. A.G., Haryana, has further argued that keeping in view that the report of the District Magistrate, Jhajjar dated 17.03.2021 (Annexure P-2) and the fact that the petitioner had been declared a hardcore prisoner, as he had not surrendered when he was granted furlough in the year 2015, is sufficient ground to reject his case for releasing him on parole.

In the facts of the present case, after jumping the concession of furlough in the year 2015, the petitioner had completed more than five years when he made an application for releasing him on parole in order to get his house repaired. He had not committed any jail offence after being declared as a hardcore prisoner in the last five years. Report dated 17.03.2021 (Annexure P-2), given by the District Magistrate, Jhajjar, was made basis while rejecting the case of the petitioner for release him on four weeks' parole. A perusal of this report shows that as per report submitted by the Executive Engineer, PWD (B&R), house of the petitioner requires repair. Reference has been made to the report of the Superintendent, District Jail, Jhajjar, where conduct of the petitioner has been found to be good in jail. He has undergone more than five years after being declared as a hardcore prisoner. Therefore, the petitioner is eligible for being released on parole in order to get his house repaired. The Superintendent of Police, Jhajjar, has

apprehension of breach of peace in the village, if the convict/petitioner is released on parole as he can abscond himself.

Short question for consideration in this petition is, “whether the report of the Superintendent of Police, Jhajjar that there is apprehension of breach of peace in the village, can be made a ground to reject the case of the petitioner to release him on parole under Section 6 of the 1988 Act?.

This question has already been considered by a Division Bench of this Court in **Baljit Singh vs. State of Punjab and others**, 2017 (3) ICC 837, wherein it has been clarified that threat affecting the security of the State is something more than the law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. In para no.18 of the judgment, it has been observed as under:-

“18. The threat to security of the State is to be understood as an act which may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorists operations engineered by foreign agencies. It can also be effected by passing of classified information like documents, secrets, maps etc. to foreign countries or through undesirable foreign links. An act which poses a threat to the State is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar

nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order as the case may be for temporary release of prisoners on parole.

The impugned order dated 13.05.2021 (Annexure P-1) passed by the Commissioner, Faridabad Division, Faridabad, does not show as to how there shall be breach of peace or threat affecting the security of the State, if the petitioner is released on parole. As per report of the Superintendent of Police, Jhajjar, there is apprehension of breach of peace in the village and the convict/petitioner can abscond on parole. The Superintendent, District Jail, Faridabad has given a report, as is evident from the order of the District Magistrate dated 17.03.2021 (Annexure P-2) that conduct of the petitioner was good in Jail and he has completed more than five years' imprisonment after being declared as a hardcore prisoner. Thereafter, the petitioner was eligible to be released on parole for getting his house repaired. As per Section 6 of the Act, case of the convict (petitioner) for release on parole can be rejected, if it is likely to endanger the security of the State or maintenance of public order. The Superintendent of Police, in his report has merely stated that there was apprehension of breach of peace in the village. This, in our view, would not amount to endanger the maintenance of public order, as explained in the judgment passed in **Baljit Singh's** case (supra).

In view of the above discussion, impugned order dated 13.05.2021 (Annexure P-1) is set aside and a direction is given to the

respondents to release the petitioner on parole for getting his house repaired, for a period of four weeks on furnishing of necessary bonds and sureties to the satisfaction of the District Magistrate concerned. The date of release and surrender shall be noticed by the releasing authority.

Writ petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

08.07.2021
ajp

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