

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

111

**CRWP-6000-2021
Date of decision: 09.07.2021**

SURENDER ALIAS SALINDER

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Sumit Jain, Addl. A.G. Haryana.
for the respondents.

ARUN KUMAR TYAGI, J (ORAL)

1. The Case has been taken up for hearing through video conferencing.

2. The petitioner has filed the present petition under Article 226/227 of the Constitution of India read with Sections 2(d) and 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short, “the 1988 Act”) and Rule 8 (iii) of the Haryana Good Conduct Prisoners Temporary (Release) Rules, 2007 (for short, “2007 Rules”) for issuing a writ in the nature of certiorari for quashing of order dated 18.03.2021 whereby his application for parole for repair of his house was declined and a writ in the nature of mandamus directing the respondents to grant parole to the petitioner for a period of four weeks to enable him to perform his marriage which is already scheduled for 12.07.2021 and 13.07.2021 and to repair his house which is in very poor condition.

3. The petition has been opposed by the respondents in terms

of short reply filed by way of affidavit of Amit, Deputy Superintendent, District Jail Jhajjar through e-mail, print out of which is taken on record.

4. I have learned Counsel for the petitioner and learned State Counsel and have also gone through the relevant material on record.

5. Learned Counsel for the petitioner has submitted that the petitioner was convicted in case FIR No.100 dated 04.09.2007 registered under Sections 120-B and 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Loharu, District Bhiwani and sentenced to undergo life imprisonment vide judgment of conviction and order of sentence dated 01.10.2010 passed by learned Additional Sessions Judge-1, Bhiwani. The petitioner filed criminal appeal No.D-1150-DB of 2010 titled as 'Surender alias Silender Vs. State of Haryana which was dismissed by this Court vide order dated 05.04.2019. The petitioner has already completed 12 years of imprisonment and availed parole and furlough several times and he never misused the same. During the period of his parole granted in August 2020, he was engaged with Indu Kumari and his marriage was scheduled for 12.07.2021 and 13.07.2021. The petitioner submitted his application for temporary release on parole to enable him to perform marriage but the Superintendent, District Jail, Rohtak declined to entertain his application on the ground that his earlier application for release on parole for repair of his house was declined vide order dated 18.03.2021 on the ground of there being apprehension of disturbance of peace in the village and commission of crime by him if he is released on parole. The parole could be denied to the petitioner only on the

ground that the same was likely to endanger the security of the State or the maintenance of the public order or cause reasonable apprehension of breach of peace which were not made out in the case. Action of the respondents in not granting parole to the petitioner is violative of Articles 14, 16, 20 and 21 of the Constitution of India and Sections and 2(d) and 3(1)(b) and (d) of the 1988 Act and Paras No.609, 611 and 612 of the Punjab Jail Manual. Therefore the impugned order dated 18.03.2021 may be set aside and the respondents may be directed to grant parole to the petitioner for a period of four weeks to enable him to perform his marriage and to repair his house.

6. On the other hand learned State Counsel has argued that benefit of the parole/furlough is only a concession for good conduct of a prisoner which is granted by the State Government with the consultation of the concerned District Magistrate and no prisoner can claim it as a matter of right. The case initiated for grant of parole to the petitioner for repair of his house was declined vide order 18.03.2021 on the basis of report of the Superintendent of Police and District Magistrate, Rohtak who recommended that the parole be declined as peace and harmony in the village would be disturbed and the petitioner could again commit another crime if he is released on parole and that the petitioner has four brothers and one sister who could repair the house.

7. While conceding that as per verification report the marriage of the petitioner is fixed for 12.07.2021 and 13.07.2021, learned State Counsel has further argued that the petitioner did not submit any application for initiating of his parole case to enable him to

perform his marriage. The petitioner was earlier released on 25 days parole for agriculture work on 19.03.2020 which was extended upto 16.11.2020 but during the period thereof the petitioner was arrested in case FIR No.198 dated 06.10.2020 registered under Section 379-B read with Section 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Dujana. The petitioner misused the concession of parole and the petitioner is not entitled to grant of parole. Therefore, the petition may be dismissed.

8. On consideration of the submissions made by learned counsel for the petitioner and learned State counsel and perusal of the material on record, I am of the considered view that the petition deserves to be allowed.

9. The petitioner was convicted and sentenced to life imprisonment by learned Additional Sessions Judge-1, Bhiwani vide judgment of conviction and order of sentence dated 01.10.2010. The petitioner filed appeal against the above-said judgment of conviction and order of sentence which was dismissed by this Court vide judgment dated 05.04.2019. The petitioner applied for parole on the ground of repair of his house which was declined vide order dated 18.03.2021. Feeling aggrieved the petitioner has filed the present petition.

10. For determination of the questions involved in the present case, reference may be made to the relevant statutory provisions.

11. Section 2(d) of the 1988 Act, which defines the term prisoner, reads as under :-

*“2(d) “Prisoner” means a person confined in prison or jail or other institution of like nature **under a sentence of imprisonment for life** or imprisonment by any court in*

India or the Court Martial or any other authority exercising the powers of a Criminal Court.”

12. Section 3 of the 1988 Act, 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, authorise any officer to exercise its powers under this section in respect of all or any other ground specified thereunder.”

13. Section 6 of the 1988 Act, which provides that the prisoners would not be entitled to release in certain cases reads as under:-

“6. Prisoners not entitled to be released in certain cases -
(1) 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 or cause reasonable apprehension of breach of peace.

(2) The District Magistrate, the State Government or the officer authorized to release the prisoner as provided in sections 3 and 4 of the Act shall take report from the Police within a specified time frame.

(3) In case of non-recommendation for release by the Police, the release granting authority shall pass a speaking order, if he disagrees with the report submitted to him.”

14. Rule 8 of the 2007 Rules which defines sufficient cause for the purpose of Sections 3(1)(d) and 10(2)(d) of the 1988 Act reads as under:-

“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;*
- (ii) medically scheduled delivery of wife of the convict;*
- (iii) **house repairs/new construction of house owned by the convict.** Parole for house repair shall be granted only once, in three years;*
- (iv) marriage of prisoner's brother's son or daughter to be celebrated in case his brother is not alive.”*

15. The petitioner undergoing life imprisonment on conviction under Section 120-B and 302 read with Section 34 of the IPC false in the definition of 'prisoner'. Section 3(1)(b) of the 1988 Act, inter alia,

provides for temporary release of a prisoner for his own marriage. In view thereof the petitioner will be entitled to grant of parole for performing his marriage.

16. Section 3(1)(d) of the 1988 Act provides for temporary release of a prisoner on parole for any sufficient cause other than those specified therein. As per Rule 8 (iii) of the 2007 Rules house repair/new construction of house owned by the convict constitutes sufficient cause for grant of parole. Therefore, the petitioner will be entitled to grant of parole for repair of his house and the same cannot be denied to him on the ground that the petitioner has four brothers and one sister and that they can carry out the repairs. Rule 8 (iii) of the 2007 Rules provides that parole for house repair can be granted only once in three years. Admittedly, the petitioner has not been granted parole for repair of his house in the last three years. Therefore, the petitioner will also be entitled to grant of parole for repair of his house.

17. A perusal of impugned order dated 18.03.2021 shows that parole case of the petitioner initiated for grant of parole to him for repair of his house was declined on the grounds that the petitioner has four brothers and one sister who are capable to repair the house and if the petitioner is released on parole there is an apprehension that some unpleasant incident may occur. The relevant part of the order as translated and reproduced in the petition reads as under:-

“I properly go through the reports submitted by District Magistrate, Rohtak and Superintendent of Police, Rohtak and documents on the file. As per report convict is undergoing Life Sentence in FIR No.100/2007, under section 302, 120-B, 34 IPC. As per reports submitted by Superintendent of Police, Rohtak convict have four brothers and one sister and they are capable to repair the

house and if the convict comes on parole there is a apprehension that some unpleasant incident may be occur apart from this convict is already undergone his sentence in FIR 287/2010 under section 147, 148, 323, 506 IPC registered at Police Station Sadar, Bhiwani and in FIR No.198/2020 under section 379-B IPC registered at Police Station Dujana, Jhajjar he in on bail. District Magistrate and Superintendent of Police, Rohtak have not recommended to release the convict on parole so in view of the above mentioned facts and circumstances parole application of convict Surender @ Salender s/o Nafe Singh is declined. Superintendent District Jail, Rohtak is directed to inform the decision of this application tot he convict and further action be taken according to rules.”

18. Section 6(1) of the 1988 Act disentitles a prisoner to release on parole 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 or cause reasonable apprehension of breach of peace.** However, such satisfaction in order to furnish a valid ground for rejection of the application of a prisoner for grant of parole has to be based on some cogent supportive material and mere reproduction of the language of the statute or expression of any general or vague apprehension of possibility of occurrence of any unpleasant incident would not be sufficient to decline parole.

19. In ***Jassa Singh @ Jassa Vs. State of Punjab : 2016 (5) RCR (Criminal) 522*** a Division Bench of this Court, while referring to Section 6 of the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962 observed as under:-

“7.For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere

generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

20. In **Jugraj Singh @ Bhola Vs. State of Punjab and other :**

2010 (25) RCR (Criminal) 138 a Division Bench of this Court observed as under:-

“.....In our opinion, the release of a convict on parole is a wing of reformatory process. Section 3 of the Act has been enacted as a reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined to him.....”

21. Another Division Bench of this Court in **Ram Chander Vs. State of Punjab and others : 2017(3) RCR (Criminal) 340** held that mere likelihood of committing crime is not to be taken as an apprehension of a threat to the security of the State or maintenance of public order.

22. Even though, the petitioner is alleged to have been arrested in case FIR No.198 dated 06.10.2020 registered under Section 379-B read with Section 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Dujana during the period of his previous parole granted on 19.03.2020 extended upto 16.11.2020 but the petitioner has claimed that he has been falsely implicated in the above said case. Admittedly, the petitioner is on bail in that case which is still pending and the question of his guilty and innocence is yet to be determined in that case. Therefore, his involvement in the above-said criminal case

does not by itself disentitle him to grant of parole till such adjudication as the possibility of false implication and also of his acquittal on conclusion of trial cannot be ruled out.

23. In view of the above referred statutory provisions and judicial precedents, parole could not be denied to the petitioner on the ground of apprehension that some unpleasant incident may occur or that the petitioner may commit some crime after his release on parole. In order to allay these apprehensions, the petitioner can be asked to furnish heavy surety for ensuring that while on parole he will maintain good behaviour and will not involve in any criminal activity.

24. In view of the above, the petition is allowed and order dated 18.03.2021 is set aside and the petitioner is ordered to be released on parole for four weeks w.e.f. 12.07.2021 on furnishing of requisite personal and surety bonds (in such heavy amount as may be considered to be appropriate) to the satisfaction of the District Magistrate, Rohtak. The District Magistrate, Rohtak may also impose such other conditions as may be considered to be necessary to secure the presence of the petitioner in jail after the parole period is over and to ensure that the petitioner maintains good conduct during the period of parole and does not misuse the same. Such conditions shall also contain a clear stipulation that in case the petitioner commits any offence during the period of his temporary release on parole, his parole and release order shall stand immediately cancelled and the amount of his personal and surety bonds shall stand forfeited with the liability for realisation without any remission of any part thereof.

25. A copy of this order be supplied to learned State Counsel

and be also sent to the District Magistrate, Rohtak and the Superintendent District Jail, Rohtak through e-mail for information/requisite compliance.

09.07.2021

Vishal

(ARUN KUMAR TYAGI)
JUDGE

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