

**IN THE HIGH COURT OF PUJAB & HARYANA AT
CHANDIGARH.**

CRWP-9920-2021

Date of Decision:-27.10.2021

Raju @ Khan.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prateek Rathee, Advocate for the Petitioner.

Mr. Rajat Gautam, DAG Haryana.

ANOOP CHITKARA, J.(ORAL)

FIR No.	Dated	Police Station	Sections
183	04.10.2010	Sahlawas	302, 392, 397 and 120-B IPC and Sections 25/54/59 of Arms Act

Criminal Case No. before trial Court	Session Case RBT 81 of 2011/2013
Criminal Case No. before High Court	CRA-S-5350-SB-2014

1. The petitioner who is undergoing his sentence in the case captioned above, has come up before this Court under Article 226 of the Constitution of India for grant of parole.
2. Vide accompanied annexure, the convict had made a written request to the concerned Jail Superintendent for release on parole. However, the prayer was declined.
3. Feeling aggrieved, he has filed the instant writ petition on the grounds mentioned in Para 3 & 4, which are extracted as follows:

“3. That before adverting to the grounds based upon which

petitioner seeks to assail the impugned order and craves for indulgence from this Hon'ble court it is necessary to give facts in retrospect for just adjudication of the present lis

I. That the petitioner is presently undergoing imprisonment for ten years in District Jail Jhajjar upon conviction rendered by learned trial court in a FIR No 183 dated 04.10.2010 registered at police station Sahlawas Jhajjar Haryana under sections 302, 392, 397, 120B of Indian Penal Code and sections 25 & 27 of Arms Act. The appeal CRA-S-5350-SB OF 2014 against said order of sentence and Judgment had been dismissed by this Honble Court vide order dated on 06.02.2020.

II. That the father of the petitioner had moved an application before the Jail Authorities on 04.06.2021, seeking temporary release of petitioner for Parole on the grounds to perform agricultural operations. The copy of same has been appended herewith as Annexure P-2 for the kind perusal of this Hon'ble Court.

III That the said application was out rightly considered by Respondent no 4 (Superintendent District Jail Jhajjar) and arbitrarily passed an order declining the concession of temporary release to the petitioner in the absence of any such jurisdiction in law to allow or decline any such temporary release by making a reference to the fact that the petitioner/convict is classified as Hardcore Prisoner under Para No.2(aa)(i)(8) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2013 and that the petitioner is debarred from parole under the Haryana Good Conduct Prisoners (Temporary Release) Amended Rules 2015 and since he has not complied with the requirements of the said act therefore, he is not entitled for temporary release. A Copy of the impugned order passed by the Id Deputy Superintendent; District Jail Faridabad is appended herewith as Annexure P-1 for

kind perusal of this Honble court.

IV Faced with this, petitioner is compelled to approach this Honble court praying for indulgence from this Hon'ble court.

4. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioner *inter alia* on the following amongst other grounds without prejudice to each other:

1. FOR THAT Petitioner is covered under section 3 of the Act, entitling the petitioner/convict for grant of Parole, thus, the impugned order of the Superintendent District Jail, Jhajjar is illegal, arbitrary and against the provisions of the Act

2. FOR THAT while it is admitted that the petitioner comes into the category of hardcore prisoner, the fact is that he has nearly completed the stipulated time period of imprisonment without parole since he is undergoing his sentence for ten years which was awarded him to on 25.09.2014 in FIR.No.183 of 2010 under sections 395,396,120B of Indian Penal Code. Moreover the petitioner has not committed any other offence during his sentence and is on the verge of reformation though, the petitioner is entitled to Parole under section 5A(2) of Haryana Good Conduct Prisoners (Temporary Release) Act 1998 which is reproduced herein under for the kind perusal of this Hon'ble High Court:-

5A Special Provision of Temporary Release of Hardcore Prisoners

(1) XXXX

2 Notwithstanding anything is Sub section (1), a convicted prisoner who has not been awarded death penalty, may be entitled for release or furlough only if he has completed his five years imprisonment and has not been awarded any major imprisonment by the Jail Superintendent, as

judicially appraised by the concerned District and Sessions Judge.

Provided that the five years imprisonment shall not include imprisonment during trial period, while counting five years of imprisonment.

3. FOR THAT, there is no power with the Jail Deputy Superintendent or Superintendent to grant or refuse the temporary release of a petitioner unless it is a case of medical emergency or death in the family of the prisoner. Jail Superintendent is only a reporting authority for such cases and their duty is only to report and submit it to the District Magistrate within 5 days for further process. The above same procedure has also been strictly interpreted by this Hon'ble Court in the matter of '**Sanjay Versus State of Haryana and Others**' CWP No 1980 of 2018 DATED 08.08.2018. Hence the impugned order passed by the Superintendent District Jail, Jhajjar is without jurisdiction.

4. FOR THAT Petitioner is aggrieved with non-compliance of the directions issued by this Hon'ble Court supra and delay in adjudication over his application seeking temporary release from prison which has caused grave prejudice to the rights of the prisoner.

5. FOR THAT, the learned Additional and Sessions Judge, Jhajjar has not barred the petitioner anywhere in the judgement from availing the benefits mentioned under section 432 and 433 of The Code of Criminal Procedure, 1973.

6. FOR THAT the impugned order passed by the Id. Superintendent, District Jail, Jhajjar has nowhere mentioned information and also had not taken any cognizance about the fact related to agricultural land which is the genesis of the application presented by the father of the petitioner, which clearly depicts negligence and arbitrariness while passing such order.

7. FOR THAT, the application presented by the father clearly states the fact that due to age of 77 years he is unable to perform the agricultural operations in normal course as it was earlier and the petitioner is the only person who is well versed with all the equipments and techniques of farming. Moreover as the harvesting season is approaching and the whole family is totally depended upon agricultural income it is very imminent to grant parole to petitioner otherwise huge loss has to bear by the family.

8. FOR THAT, being in a civilized society organized with law and a system as such it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. As has been held and laid down in the judgments which reformed the Penal Jurisprudence in India i.e. Sunil Batra II vs. Delhi Administration (1980) 3 SCC 488, Maneka Gandhi v Union of India and Another (1978) 1 SCC 248, and Charles Sobraj vs. Superintendent Central Jail, Tihar, New Delhi (1978) 4 SCC 104

9. FOR THAT, International instruments like the International Covenant on Civil and Political Rights and the UN Standard Minimum Rules for the Treatment of Prisoners also known as the Mandela Rules reflect the importance of the reformatory process while executing a sentence of imprisonment. The European Court of Human Rights in Vinter v United Kingdom came to the finding that a law providing for a whole life sentence without the prospect of release or review of sentence would amount to inhuman and degrading punishment, falling foul of Article 3 of the ECHR. ”

4. Although the petitioner is not entitled to get parole under the parole rules, the aura of Article 21 of the Constitution of India would remove any such restriction if the facts and circumstances justify such parole. Given the economic slowdown and hardship due to COVID-19 pandemic, coupled with the prayer made by the petitioner, and the peculiar facts and circumstances mentioned in the petition, the petitioner shall be released on parole for fourteen days, subject to furnishing requisite bonds to the satisfaction of the concerned authorities.

6. The parole is subject to the condition that the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority during the release period and shall not repeat or commit any offence; and the violation might not entitle the similar reliefs in future.

Petition allowed.

(ANOOP CHITKARA)
JUDGE

October 27, 2021
Vinay

Whether speaking/reasoned	Yes
Whether Reportable	No