

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

CRWP No. 1350 of 2022
Date of decision: 25.04.2022

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Phool Kumar

....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

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

Ms. Palika Monga, DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present criminal writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 3(1)(c), Section 2(c) and Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is to the order dated 27.01.2022 (Annexure P-1) passed by the Divisional Commissioner, Rohtak whereby, benefit of parole has been declined to the petitioner.

A perusal of the paper book would go on to show that the petitioner is undergoing rigorous imprisonment for a period of 12 years under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'). On the ground of adverse reports of the District Magistrate, Rohtak and the Superintendent of Police, Rohtak, the benefit as such has been declined while noting that the petitioner has 4 acres of land registered in his name but the report is that his family as such is capable of performing agricultural tasks. Another additional ground as such is that

there is apprehension of disturbance of peace and tranquility if a criminal is allowed parole, which has been whole heartedly accepted by the Divisional Commissioner without any application of mind and without keeping into consideration the fact that on an earlier occasion, the petitioner has availed parole of 75 weeks and 1 day and surrendered back in time. Nothing has been shown in the reply now filed that the petitioner at that point of time misused the parole which was granted for the said period, which runs to 1 year, 5 months and 16 days during his period of incarceration.

In spite of the repeated orders having been passed on the said issue by this Court that the declining of parole only on the reason of apprehension of breach of peace is not justified, the competent authorities continue to pass mechanical orders, with which this Court is to deal with on regular basis. We are of the considered opinion that once this Court has opined time and again on this aspect, the reasoning which is being given as such that there is apprehension of breach of peace is totally alien as such for the purposes of grant of parole specially more so, when on an earlier occasion, the petitioner as such had availed the benefit and surrendered back in time.

In such circumstances, we are of the considered opinion that the State needs to have a re-look at the issue and issue necessary instructions to the concerned officials to deal with these issues on regular basis. A Division Bench of this Court in ***Ram Chander vs. State of Punjab and others 2017(3) R.C.R. (Criminal) 340***, while taking into account the judgment in ***CRM-M No.34013 of 2009 titled Varun @ Gullu vs. State of Haryana and others***, decided on 26.04.2010, had noticed that the benefits of parole and furlough are regulated by a statute and the authorities cannot

act arbitrarily, capriciously or without due application of mind. Declining the request for parole or furlough only for the reason of apprehension of breach of peace, for which there is no such condition under the Act, was held not to be justified.

The Apex Court in ***Asfaq vs. State of Rajasthan and others, 2017 (15) SCC 55*** also dealt with the issue of provisions of parole and furlough and held that a humanistic approach is to be adopted against those who are lodged in jails. The relevant portion reads thus:-

“15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest

also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.”

It is in such circumstances, we feel that the order as such declining the benefit is without any sustainable reasons.

Accordingly, the present petition is allowed and the impugned order 27.01.2022 (Annexure P-1) is set aside. The petitioner shall be released on parole for a period of 6 weeks on furnishing the requisite bail bonds to the satisfaction of the competent authority and he shall surrender

release.

Copy of the order be sent to the Chief Secretary of the State of Haryana for necessary circulation amongst the concerned quarters so that a more humanistic approach is taken by them while dealing with such like applications and the burden of this Court can be reduced.

(G.S. SANDHAWALIA)
JUDGE

25.04.2022
shivani

(VIKAS SURI)
JUDGE

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