

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

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CRWP-1324-2022

Date of Decision: 20.10.2022

SURENDER @ CHOTI

...Petitioner

V/S

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Ms. Amrita Garg, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG Haryana.

DEEPAK MANCHANDA J.

The instant petition has been filed challenging the impugned order dated 28.01.2022 (Annexure P-13) passed by respondent No. 6 vide which the application for grant of furlough to the petitioner had been declined on the ground that the petitioner falls into the definition of a 'Hard-Core prisoner' under section 2 (aa) (ii) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and has also sought directions to the respondents for granting furlough to the petitioner under Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

The pleadings emanate that the petitioner has been convicted and sentenced to undergo life imprisonment in case FIR No. 77 dated 25.03.2014 under section 302, 201, 120-B of the Indian Penal Code (hereinafter to be referred to as 'IPC') and Section 25 of the Arms Act, registered at Police Station Sadar Ballabgarh, District Faridabad and the conviction had been challenged vide appeal number CRA-D-435-DB of 2018, which is lying admitted before this Court. The details of other criminal cases against the petitioner are

mentioned in the custody certificate in Annexure P-14 of the petition. When an earlier, request for a grant of 21 days of furlough, was declined then petitioner filed CRWP-11759-2021, which was disposed of vide order dated 18.01.2022 whereby respondent No. 6 was directed to decide the prayer of the petitioner for furlough within a period of one week. In compliance with, the order dated 18.01.2022 passed by this Court, the report of respondent No. 3 i.e. Superintendent, District Jail, Gurugram Haryana was sought, and respondent No. 6 vide impugned order dated 28.01.2022 rejected the furlough application of the petitioner on the ground that petitioner falls into the Hard-Core category mentioned under section 2 (aa) (ii) Of the Haryana Good Conduct (Temporary Release) Amended Act 2013, wherein total 77 cases had been registered against the petitioner, out of which in 29 cases he had undergone sentence, acquitted in 29 cases and is on bail in 17 cases. Further in two cases he has been awarded life sentence and apart from these cases, he has undergone sentence in many other cases.

After issuance of notice of motion on 15.02.2022 respondents, No. 1 to 3, 6 and, 7 filed their reply by way of an affidavit dated 05.05.2022, wherein the complete criminal record of the petitioner by giving complete details in para No. 3 and 4 of the said reply/affidavit has been filed and reiterated the same stand as mentioned in the order dated 28.01.2022 vide which the application of the petitioner had been declined.

Heard Learned counsels for the parties.

Learned counsel for the petitioner argued that the petitioner has been wrongly categorised as a hard-core prisoner given in section 2 (aa) (ii) of the 1988 Act which was amended in the year 2013 and submitted that earlier also the application for parole of the petitioner was rejected on the similar ground as

a mobile phone was recovered from the petitioner regarding which the FIR No. 307 dated 15.11.2017 under Section 42 of Prisoners Act 1894, registered at Bhondsi, District Gurugram was pending at that time wherein he was later acquitted. The learned counsel further argued that the definition of hard-core prisoner would not be applicable as there are no cases which falls within the parameters of the said definition and the cases which have been mentioned by the respondent State wherein he was acquitted/convicted are related to the period prior to the year 2018 and the petitioner has shown good conduct since then and has never been punished for any jail offence and his conduct has been satisfactory even as per the status report filed by the respondent No. 9. The learned counsel further argued by making a reference to para 29 and 30 mentioned in the petition and took a plea that the necessary ingredients required under section 2 (aa) (ii) of the 1988 Act are missing and as per custody certificate, the offences in which the commission of offence has taken place, do not fall within the necessary parameters as the date of conviction is much prior to 5 years, excluding period of detention/imprisonment from 30/03/2018 in FIR No. 77 of 2014 and in other cases there is no sentence post-conviction and therefore the requirement of 12 months stands unmet and in other cases the offences committed do not come under Chapter XII or XVII of IPC. Therefore he is eligible for grant of temporary release on furlough. The learned counsel has relied upon the judicial precedences in *Asfaq V/s State of Rajasthan and others (2017) 15 SCC 55*, *Rai Singh versus the State of Haryana 995, SCC, P &H 1102*, *Dharambir & Anr. Vs. State of Uttar Pradesh (1979) 3 SCC 645*, *Balwant Vs. State of Haryana in CWP-27384 of 2018 decided on 12.04.2019 by this Court*, *Ram Chander Vs. State of Punjab, 2017 SCC Online P&H 5497* and *Balwant Vs. State of Haryana and Ors in CWP-4841-2018 was decided on 19.03.2018 by this Court*.

Learned State counsel, on the other hand, has submitted that the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 as amended from time to time has been enacted to provide a temporary release to the prisoners for good conduct on certain conditions and the petitioner is a habitual hardcore criminal, who is involved in 76 cases, in which he has been convicted in 30 cases and 16 cases are still pending against him on which he is on bail, and in 30 cases he has been acquitted by the learned trial courts. He has drawn our attention to the list of cases and details mentioned in para 4 of the reply and further argued that no prisoner has a vested right to get the benefit of temporary release on parole. It is a concession, which is given to a prisoner upon fulfilling certain conditions and is the privilege granted by the State to the convicted prisoners and can be given on certain specific grounds and relied upon the judgments (mentioned in para 8 and 9 of the reply).

However, the learned State counsel is unable to refute the submission that even while reconsideration of the issue in compliance with the order dated 18.01.2022 in CRWP No. 11759 of 2021, which has led to rejection vide impugned order dated 28.01.2022, whether the same has been passed from non-consideration of the statutory provisions contained in the Amended Act of 2013 and the Rules framed thereunder (Now Amended Act, 2022).

We have given our thoughtful consideration to the matter and have gone through the record with the assistance of learned Counsel for the respective parties. Since the enactment of the Act 1988, several amendments were made in the Haryana Good Conduct Prisoners (Temporary Release) Act (Act, 1988) and the definition of “Hard Core Prisoner” was inserted in the year 2012, but the order dated 28.01.2022 has been passed under section 2 (aa) (ii) Of the Haryana Good Conduct (Temporary Release) Amended Act 2013, the sequence of those

amendments till the Amended act 2022 is reproduced herein below

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Section 2 of the Act in 1988:-

2. In this Act, unless the context otherwise requires,

(a) "District Magistrate" means the District Magistrate of the district within whose jurisdiction the prisoner after his temporary release under this Act, is likely to reside during the period of his release;

(b) "member of prisoner's family" means the husband, wife, son, daughter, father, mother, brother, or sister of the prisoner;

(c) "prescribed" means prescribed by the rules made under this Act;

(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;

(e) "Superintendent of Jail" means the officer in charge of the prison or jail or other institution of like nature in which the prisoner is undergoing his sentence of imprisonment for life or imprisonment."

Section 2 in the amended Act of 2013:-

"2. For clause (aa) of section 2 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, the following clause shall be substituted namely:

(aa) "hardcore prisoner" means a person.—

(i) who has been convicted of-

(1) robbery under section 392 or 394 IPC;

(2) dacoity under section 395, 396 or 397 IPC;

(3) kidnapping for ransom under section 364-A IPC;

(4) murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;

(5) rape with murder under section 376 read with 302 IPC;

(6) rape of a woman below sixteen years of age.

(7) rape as covered under section 376-A, 376-D or

376-E IPC;

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(8) serial killing i.e. murder under section 302 IPC in two or more cases in different First Information Reports.

(9) murder under section 302 IPC. if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case.

(10) lurking house-trespass ur housebreaking where death or grievous hurt is caused under section 459 or 460 IPC:

(11) either of the offences under sections 121 to 124-A IPC:

(12) immoral trafficking under section 3, 4 or 5 of the Immoral Traffic (Prevention: Act, 1956 (104 of 1956) involving minors or under section 366 A. 366-B, 372 or 373 IPC:

(13) offence under section 17(C) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or

(14) offence under section 14 of the Protection of Children from Sexual Offences Act. 2012 (Central Act 32 of 2012); or

(ii) who during a period of five years immediately before his conviction has earlier been convicted and sentenced for the commission of one or more offences mentioned in Chapter XII or XVII of IPC. except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months:

Provided that while counting the period of five years. the period of actual imprisonment or detention shall be excluded:

Provided further that if a conviction has been set aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to death penalty, or

(iv) who has been detected using a cell phone or in possession of a cell phone/SIM card inside the jail premises; or

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

Provided that the State Government may by notification include any offence in the list of offences mentioned above.

Section 2 in the Amended Act of 2022:-

“2. (1) In this Act, unless the context otherwise requires,

(a) "competent authority" means the competent authority as notified by the State Government for the purposes of this Act;

(b) "convicted prisoner" means a person confined in a 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;

(c) "Deputy Commissioner of Police" means the Deputy Commissioner of Police of the district within whose jurisdiction the convicted prisoner after his temporary release under this Act is likely to reside during the period of his temporary release;

(d) "District Magistrate" means the District Magistrate of the district within whose jurisdiction the convicted prisoner after his temporary release under this Act is likely to reside during the period of his temporary release;

(e) "Form" means a form appended to this Act;

(f) "furlough" means temporary release from custody of a convicted prisoner as an incentive on account of his good behaviour and conduct over a period of time as specified under this Act. The period of furlough may count towards the awarded sentence subject to the conditions as specified in this Act or rules made thereunder;

(g) "hardcore convicted prisoner" means any prisoner

(i) who has been convicted for any of the following offences:

(1) robbery under section 392 or section 394 of the Indian Penal Code, 1860 (Central Act 45 of 1860); or

(2) dacoity under section 395 or section 396 or section 397 of the Indian Penal Code, 1860 (Central Act 45 of 1860); or

(3) kidnapping for ransom under section 364-A of the Indian Penal Code, 1860 (Central Act 45 of 1860), or

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- (4) *murder or attempt to murder for extortion under section 387 read with section 302 or section 387 read with section 307 of the Indian Penal Code, 1860 (Central Act 45 of 1860), or*
- (5) *rape or penetrative sexual assault or aggravated penetrative sexual assault or unnatural offence with murder under section 376 or section 377 read with section 302 of the Indian Penal Code, 1860 (Central Act 45 of 1860), or*
- (6) *rape or penetrative sexual assault or aggravated penetrative sexual assault or unnatural offence with a child below sixteen years of age, or*
- (7) *gang rape or rape as covered under section 376-A or section 376-C or section 376-D or section 376-B of the Indian Penal Code, 1860 (Central Act 45 of 1860), or*
- (8) *serial killing i.e. murder under section 302 of the Indian Penal Code, 1860 (Central Act 45 of 1860) in two or more cases in different First Information Reports (FIRs), or*
- (9) *murder under section 302 of the Indian Penal Code, 1860 (Central Act 45 of 1860), if the offender is involved in contract killing as apparent from the facts mentioned in the judgment of the case; or*
- (10) *lurking house trespass and convicted under section 458 or section 459 or section 460 of the Indian Penal Code, 1860 (Central Act 45 of 1860); or*
- (11) *offence under section 121 or section 121-A or section 122 or section 123 or section 124 or section 124-A of the Indian Penal Code, 1860 (Central Act 45 of 1860), or*
- (12) *immoral trafficking under sections 3, 4, or 5 of the Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956) involving minors or under sections 366-A, 366-B, 372, or section 373 of the Indian Penal Code, 1860 (Central Act 45 of 1860); or*
- (13) *offence under section 15(c) or section 17(c) or section 18(b) or section 19 or section 20(c) or section 21(c) or section 22(c) or section 23(c) or section 24 or section 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or*
- (14) *escaping or helping to escape from lawful custody and convicted under section 224 or section 225 of the Indian Penal Code, 1860 (Central Act 45 of 1860);*

(ii) *who during a period of five years immediately before his conviction has earlier been convicted and sentenced for the*

commission of one or more offences mentioned in Chapter XVII or XVII of the Indian Penal Code, 1860 (Central Act 45 of 1860), except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months:

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Provided that if a conviction has been set aside in appeal or revision then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to the death penalty or imprisonment till natural life; or

(iv) who has been found in possession or detected using a wireless communication device or its components or any unauthorised electronic device inside the jail premises; or

(v) who fails or failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period of parole or furlough for which he was released; or

(vi) who commits a cognizable offence punishable with imprisonment for a period of seven years or above during confinement in the jail or during his temporary release under this Act, or

(vii) who has been punished more than two times with a major punishment by the Superintendent Jail concerned for committing any jail offence or convicted in judicial proceedings by the concerned Court; or

(viii) who has been detained or convicted under the National Security Act, 1980 (Central Act 65 of 1980), the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987), the Official Secrets Act, 1923 (Central Act 19 of 1923), the Foreigners Act, 1946 (Central Act 31 of 1946) or any Act (Central or State) for control of organised crime;

(h) "member of convicted prisoner's family" means the spouse, children, sibling parent, grandparent, and grandchildren of the convicted prisoner;

(i) "parole" means the temporary release of a convicted prisoner from custody and is categorized as under

(i) "custody parole" means escorting of a convicted prisoner under armed police custody to the place of visit (within the territory of the Republic of India) and returning therefrom for a specific period and for specific reasons as provided under this Act;

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(ii) 'emergency parole' means parole granted to a convicted prisoner by the Superintendent Jail when a member of the convicted prisoner's family has died or is in serious condition or the convicted prisoner himself is in serious condition under section 5;

(iii) 'regular parole' means parole granted to a convicted prisoner by the competent authority under section 3;

(j) "Superintendent of Police" means the Superintendent of Police of the district within whose jurisdiction the convicted prisoner after his temporary release under this Act is likely to reside during the period of his temporary release;

(k) "sentence" means a sentence of imprisonment finally delivered in appeal or revision or otherwise and includes an aggregate of one or more sentences;

(l) "Superintendent Jail" means the officer-in-charge of jail or other institution of like nature in which the convicted prisoner is confined;

(m) "State Government" means the Government of the State of Haryana in the administrative department;

(n) "temporary release" means the temporary release of a convicted prisoner on custody parole or emergency parole or regular parole or furlough.

(2) Words and expressions used herein but not defined shall have the same meaning as assigned to them under the Prisons Act, 1894 (Central Act 9 of 1894) rules made thereunder and as contained in the Punjab Jail Manual. ”

In the interregnum, the State of Haryana repealed the Haryana Good Conduct of Prisoners (Temporary Release) Act, 1988, and now has enacted a new statute, the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (15 of 2022) which came into effect from 11.04.2022 and as per section 14 of the Act, the repeal shall not affect.

“(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation, or liability acquired or incurred under the Act so repealed; or

(c) any penalty, forfeiture, or punishment incurred in respect of any offence committed against the Act so repealed; or

(d) any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceedings, or remedy may be instituted, continued, or

enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed;

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Provided further that anything done or any action taken under the Act so repealed shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue to be in force accordingly unless and until superseded by anything or any action taken under this Act.”

The petitioner has further prayed for seeking directions to consider his case under Section 4 of the Act, which is conditional and where the said Section clarifies that the competent authority shall grant furlough to a convicted prisoner subject to such conditions and procedure as specified under Section 11 and 12. The relevant extract is reproduced below:

“Temporary release of a convicted prisoner on furlough on certain conditions:-

(1) The competent authority shall grant furlough to a convicted prisoner subject to such conditions and procedure as specified under Sections 11 and 12

(2) The period for which a convicted prisoner may be released under this section shall be three weeks and this period shall not be availed in parts;

Provided that the convicted prisoner has completed his three/a fourth of the total sentence in case of term sentence and ten years in case of life imprisonment, the period of release under this Section shall be four weeks and this period shall not be availed in parts.

(3) Convicted prisoner who has completed three years sentence after conviction shall not be eligible for furlough.

Provided that the convicted prisoner who has been punished for any jail offence or violation of conditions of temporary release during the last three years shall not be eligible for furlough:

Provided further that the convicted prisoners sentenced under the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or sedition or rape with murder or robbery or dacoity with murder or murder with intention of collecting ransom or extortion or sexual offenses against a child below twelve years of age or sentenced to undergo imprisonment till natural life shall not be eligible for furlough.

(4) The report of the Deputy Commissioner of Police or the Superintendent of Police; as the case may be and recommendation by the District Magistrate shall be submitted to the competent authority

within the time limit as specified under this Act, for the temporary release of a convicted prisoner on furlough.

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(5) Subject to the provision of clause (d) of sub-section (3) of section 9, the period of release under this section shall count towards the actual sentence undergone by a prisoner.”

Pleadings of the case in hand show that the mother of the petitioner had applied for 21 days of furlough vide Annexure P-6 on the ground that her age is 73 years and she remains unwell and the petitioner's daughter aged 15 years namely Anjali Chauhan also resides with his mother and there is no one to look after them.

The impugned order dated 28.01.2022 has been passed under section 2(aa)(ii) of the act which says that any prisoner, who during a period of five years immediately before his conviction has earlier been convicted and sentenced for the commission of one or more offences mentioned in Chapter XII or XVII of the Indian Penal Code, 1860 (Central Act 45 of 1860), except the offences covered under the clause (i), whereas the perusal of the custody certificates annexed with the petition as well as with the reply reveal that the offences in which the conviction has taken place do not fall within the necessary parameters, as in FIR No. 77 of 2014, wherein the petitioner is currently undergoing sentence and in other cases there is no sentence post-conviction, therefore the requirement of 12 months stands unmet. Hence, rejection vide impugned order under section 2(aa)(ii) of the act is not justified.

The stand taken in the reply filed by the respondent authorities is that the release of the petitioner is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of a breach of peace. As per the procedure prescribed, if the respondent authorities oppose the temporary release of a prisoner, the grounds prescribed must make out that the prisoner's presence is dangerous to the security of the State or is prejudicial to the maintenance of public order, where no such reasoning has been made before

taking such a stand.

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Further as per the definition of furlough mentioned in the Act, which means temporary release from custody of a convicted prisoner as an incentive on account of his good behaviour and conduct. The period of furlough may count towards the awarded sentence subject to the condition as specified in this Act or rules made thereunder. The reply filed by the respondent authorities does not disclose any such incident where they have noticed or found bad behavior in the conduct of the petitioner during his custody as a convicted prisoner, rather in pleadings this fact had been brought to the notice that after issuance of notice of motion in the earlier CRWP-11759-2021, the status report was filed by the Superintendent of Prison, Central Jail, Rohini, New Delhi, in said status report, the record of the petitioner was found satisfactory but the jail authority declined to decide the application of furlough on the ground that since the petitioner is a convict of Haryana State, therefore his furlough application has to be decided by the competent authority of the State of Haryana.

The counsel for the petitioner has relied upon the landmark judgment of the Hon'ble Supreme Court on a similar issue in the case of "***Ashfaq Vs. State of Rajasthan and Others 2017 (15) SCC 55***" where it has been upheld that the furlough is a brief release from the prison which is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission. A convict, latterly speaking, must remain in jail for a period of a sentence or the rest of their life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too

must breathe fresh air for at least some time provided, they maintain good conduct consistently, during incarceration and show a tendency to reform themselves and become good citizens. Thus redemption and rehabilitation of such prisoners for good of society must receive due weightage while they are undergoing a sentence of imprisonment.

The Hon'ble Supreme Court further clarified while dealing with a similar issue that the provisions of parole and furlough thus provide for a humanistic approach towards those lodged in jails. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without a strong network of support, employment prospects, a fundamental knowledge of the community to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activities post-release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help offenders prepare for success. Further, there can be no avail in saying that a society that believes in the worth of individuals can have the quality of its belief judged, at least in part by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and 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 any crime he ceases to be a human being and he can be deprived of those aspects of life which constitute human dignity. For a prisoner, all fundamental rights are enforceable realities, though restricted by the fact of imprisonment.

Since the respondent authorities have presented the case of the petitioner in the category of hard-core prisoner, keeping in view his past conduct

involving several cases and his continuous crime being a habit against society, the same issue has also been dealt with by the Hon'ble Supreme Court by giving a reference of a Frank Exner, a noted criminalist and sociologist in para 25 of the judgment that there may be a hard-core criminal who because of their crime and method of their dealing with the crime form associations, loyalties, and attitudes which tend to persist. Persistent criminal behavior may also be due to personality traits imposed frequently due to pathological traits of personalities, mental defectiveness, emotional instability, mental conflict, ego-centralism, and psychosis, where the chances of repeating crimes with the number of previous arrests and the interval between the last and the next offence become shortened as the number of previous crime progresses. The purpose of criminological studies is a prognosis of the improbable occasional offenders and that of the irredeemable habitual offenders and hard-core criminals. This reference is being made only to depict and as a counter to the plea taken by the respondent authorities by terming the petitioner a hard-core criminal which may help to understand the criminal behavior and the continuous criminal character of the petitioner.

Though the petitioner has been denied furlough because he is a hard-core criminal and additional stand taken in reply that there is apprehension that he may commit a crime if released on furlough and peace may be disturbed, the given reasoning is not acceptable. The likelihood of committing a crime while on furlough would not be sufficient ground for denying temporary release as the mere likelihood of committing a crime is not to be taken as an apprehension of a threat to the security of the State or maintenance of public order. Temporary Release Acts envisage the temporary release of convicts. The mere fact that the person is convicted for an offense does not mean that he may abscond or

commit a crime if released on furlough. It is always open to the authorities to impose stringent conditions to guard against such eventualities.

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We are constrained to observe that a convict or a prisoner is not stripped of his fundamental rights and other legal rights say those which are inconsistent with his incarceration. The petitioner would be released from jail for a short time by granting furlough. It is granted for various reasons such as to enable the prisoner to return to the outside world to enable continuity with his family life and to deal with family matters as furlough is a part of penal reform. The obvious objects for granting furlough or to enable the petitioner inmate to maintain continuity with his family life and deal with family matters and to save the inmate from the evil effects of continuous prison life. Even in the stand taken by the respondent authorities, not even a single instance has been cited where the petitioner has misused any concession if ever granted, and further, the perusal of the same shows that no such temporary release or concession has been granted to the petitioner during his incarceration. The reason for seeking furlough is that the mother of the petitioner is an old lady aged 73 years and is suffering from various ailments and there is no one in the petitioner's family to look after his mother. Furthermore, the petitioner has a young daughter aged about 15 years and there is no one to take care of her including her educational and other needs. To enable the inmate to maintain constructive hope and active interest in life, statutory provisions have been made for granting furlough to a prisoner. If, the same is denied for the undue reasoning and conditions, which are beyond the means of the prisoner, the very purpose of the statute making the parole or furlough would be frustrated and shall become a dead letter that is meant to be complied with instead of defying the same.

For the reasons mentioned above and to balance the law and equity

collectively, this petition is allowed.

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The impugned order dated 28.01.2022 (Annexure P-13) is set aside. 21 days furlough is granted to the petitioner. On the expiry of the period of furlough of 21 days, the petitioner is directed to surrender before the jail authorities and the period of furlough shall be counted from the day after the date when the petitioner is released from jail.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

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Ajay Goswami

Whether speaking reasoned
Whether reportable

Yes/No
Yes/No