

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-6817-2022

Date of decision : 15.11.2022

Jai Bhagwan @ Devender @ Bhaum

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Randeep S. Dhull, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana

PANKAJ JAIN, J. (ORAL)

Petitioner by way of present petition has laid challenge to the order dated 26.05.2022 passed by Divisional Commissioner, Ambala Division, Ambala whereby his prayer for grant of parole has been declined for the following reasons:-

“xx xx xx

I have carefully gone through and scrutinized the reports and documents submitted by the District Magistrate, Rohtak and Superintendent of Police, Rohtak. According to the report of the District Magistrate, Rohtak there lie 7 total cases registered against the prisoner. A case bearing FIR No.256 dated 11.09.2006 had been registered against the prisoner under Section 8, 9 of the Parole Act at Police Station Sadar, Rohtak. The prisoner can be absent while on parole. The apprehension of breach of public peace on the event of leave being granted to the prisoner cannot be fully dismissed. The prisoner is a habitual absconder. Besides this, in the given reports the

District Magistrate, Rohtak and the Superintendent of Police, Rohtak have not suggested the grant of prole for the submitted application. Therefore, on the basis of the aforementioned reasons, and in view of the reports of the District magistrate, Rohtak and the Superintendent of Police, Rohtak the parole application of the prisoner No.7873/2018 Jai Bhagwan alias Devender alias Bhaum is hereby rejected. Superintendent, Central Jail, Ambala should have the prisoner be made aware of the present decision and take necessary action regarding the same.

2. As per the averments made in the petition, the petitioner is a convict in FIR No.599/2002 dated 16.11.2022, under Sections 364-A, 343, 394, 506, 120-B, 34, 216, 365 of IPC and Sections 25/54/59 of Arms Act and his appeal bearing No. Parole/2098-99 stands dismissed. The petitioner is a life convict servicing life sentence. There are in total seven cases lodged against the petitioner. Out of the said seven cases, in three of them the petitioner has already undergone the sentence and is earned acquittal in the following:-

- (i) FIR No.522/2006 dated N/A, under Sections 25/54/59 of Arms Act, at Police Station Keshav Puram, North West Delhi.
- (ii) FIR No.163/2008 dated N/A, under Sections 399 and 402 of IPC, at Police Station City Rohtak, Rohtak.
- (iii) FIR No.282/2009 dated N/A, under Section 323 of IPC, at Police Station City Rohtak, Rohtak.
- (iv) FIR No.333/2017 dated 05.11.2017, under Sections 25/54/59 of Arms Act, at Police Station Old Sabji Mandi, Rewari.

3. In one case, the petitioner stands admitted on bail. The petitioner applied for parole. The same was declined vide impugned order dated 26.05.2022.

4. Counsel for the petitioner submits that the reasons assigned in the impugned order cannot be sustained and the petitioner deserves to be released on parole. Reliance is being placed upon order passed by Division Bench in ***CRWP No.1350 of 2022***, titled as ***Phool Kumar vs. State of Haryana and others***, wherein it was held as under:-

“XX XX XX

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.”

5. Per contra, State counsel submits that the petitioner is a habitual offender and earlier also when released on parole on 23.10.2017, the petitioner indulged in illegal activities and was apprehended on 06.11.2017 in FIR No.333/2017 dated 05.11.2017, under Sections 25/54/59 of Arms Act, at Police Station Old Sabji Mandi, Rewari.

6. I have heard counsel for the parties and have gone through the records of the case.

7. The solitary reason assigned for declining prayer of parole is that the petitioner is habitual offender and when released on parole, he was apprehended for offence punishable under Arms Act. Having considered the same in the background of the settled proposition of law, the reasoning adopted by the authorities cannot be accepted. The petitioner when released on bail, admittedly was not a threat to the peace and tranquility. Apart from allegation of being in possession of arms, there is no allegation that there was any act attributable to him leading to breach and peace. Resultantly, the impugned order cannot be sustained.

8. In *Afsaq vs. The State of Rajasthan, reported as 2017 (15) SCC 55*, the Apex Court observed that the administrators ought to encourage offenders to demonstrate a commitment to reconcile with society and should aspire them to live as a law-abiding citizens. Parole programme should be used as tool to shape such adjustments.

9. Thus, keeping in view the reformatory objective behind the grant of parole and the law laid down by Division Bench in Phool Kumar's case (supra), the present petition is allowed. Petitioner is ordered to be released on parole for a period of 04 weeks on his furnishing bail/surety bonds to the satisfaction of competent authority, in accordance with law.

(PANKAJ JAIN)
JUDGE

15.11.2022

Dinesh

Whether speaking/reasoned
Whether Reportable :

Yes
No