

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRWP No.10500 of 2021

Date of decision : 11.01.2022

Vijay Singh

.....Petitioner

VERSUS

State of Haryana and Others

.....Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Harveet Singh Sehgal, Advocate, for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

VINOD S. BHARDWAJ, J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. The instant petition raises a challenge to the order dated 5th May, 2021 passed by the Divisional Commissioner, Hisar, whereby the application submitted by the petitioner seeking furlough was rejected.

3. Learned counsel appearing on behalf of the petitioner, contends that the petitioner, who is more than 60 years of age, had been convicted in FIR No.222 dated 31.08.2013, registered at Police Station Bhattu Kalan District Fatehabad, under Sections 302, 147, 148, 149, 216 IPC vide judgment dated 14.11.2014 passed by Additional Sessions Judge, Chandigarh. Learned counsel submits that the petitioner has been in custody for nearly 8 years and there is no complaint pertaining to his conduct as a prisoner. Further, the reasons endorsed by the Divisional Commissioner, Hisar for rejection of the application for grant of furlough are conjectural and devoid of any merit. The petitioner fulfils the eligibility

conditions prescribed in terms of Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and is thus entitled to be released on furlough as per provisions of the Act. The rejection of the application amounts to denial the right of the petitioner to seek furlough to meet his family.

4. The petition is opposed by the learned State counsel. It has been argued that the petitioner, along with his co-accused had been convicted in case FIR No.74 dated 08.04.2009 registered under Sections 148/149/323/285/341/307/506 IPC read with Section 25 of the Arms Act arising out of a land dispute for having caused injuries to the now deceased (father of the complainant). After having been granted the concession of suspension of sentence vide order dated 05.09.2012 in the aforesaid FIR No.74 dated 08.04.2009, the petitioner along with his sons opened attack on the father of the complainant and gave *gandasi* blow on the right side of the neck of the father of the complainant to avenge his conviction in the earlier case.

5. It was also argued that the petitioner had earlier been granted the concession of parole vide order dated 01.04.2015. The said order of parole was challenged by the complainant by filing a Criminal Writ Petition No. 634 of 2015 titled as Pankaj Bansal Vs. State of Haryana and others. The petition was allowed and the order dated 01.04.2015 granting parole was set aside by the High Court. Thereafter, the petitioner submitted an application for grant of parole on 08.04.2016 to the Superintendent of Prison, Model Jail Chandigarh to meet his family. In the said application, the petitioner had deliberately given a wrong address of Village Rajpuria,

Tehsil Rajgarh, Police Station Sidmukh, District Churu (Rajasthan). The same was pointed out by the District Magistrate, Churu (Rajasthan) in his report sent to the authorities. The application seeking parole was thus rejected by the Inspector General of Prisons, U.T. Chandigarh vide order dated 04.11.2016. The aforesaid order of rejection was challenged by the petitioner by filing CRWP No.563 of 2017 and the same was withdrawn vide order dated 16.05.2017. Yet another attempt for seeking parole was made by filing Criminal Writ Petition No.763 of 2017 and even the same was dismissed as withdrawn vide order dated 13.11.2017. The petitioner thereafter moved an application for grant of furlough, however, the same was declined vide order dated 11.04.2020 (endorsed on 13.04.2020) by the Divisional Commissioner, Hisar. The petitioner had also filed Criminal Writ Petition No.9753 of 2021. The said petition was also dismissed as withdrawn to take necessary remedial steps, vide order dated 25.10.2021.

6. Learned State counsel argues that instead of challenging the earlier order rejecting furlough, the petitioner moved a fresh application. Hence, the petitioner did not find any illegality or perversity in the said order and accepted the same. Report was sought from the District Magistrate Fatehabad, on the said application, who did not recommend the grant of furlough to the petitioner whereupon the Divisional Commissioner has rightly rejected the application for grant of furlough vide his order dated 05.05.2021. It is contended that a prisoner does not have a right to be granted furlough and that it is only a concession extended under the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act 1988 and the Rules of 2007.

7. Learned counsel for the petitioner responded to the arguments raised by the State and submitted that the petitioner fulfils the conditions prescribed under Section 4 of the Act of 1988 and there is no complaint as regards his conduct in prison. A right thus accrues in favour of the prisoner to avail the concession of furlough subject to satisfying the conditions prescribed under Section 4 of the Act of 1988 and that such accrued right cannot be denied on a mere apprehension expressed by the District Administration more so when the conduct of the petitioner while in custody has been unblemished.

8. We have considered the arguments advanced by the counsel appearing on behalf of the respective parties and have gone through the record. We, however, do not find ourselves in agreement with the submissions raised on behalf of the petitioner.

9. Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 reads as follows:-

Temporary release of prisoners on furlough:-

(1) The State Government or any other officer authorised by it in this behalf may, in consultation with such other officer as may be appointed by the State government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who-

(a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the pre-sentence detention, if any;

(b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned atleast three annual good conduct remissions;

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of Section 8 the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner.

10. A perusal of the same shows that the Act of 1988 does not qualify that the good conduct of a prisoner seeking furlough must relate only to the period of custody of the prisoner. The conduct of the prisoner within and outside the jail premises thus can be looked into by the State government before taking a decision for extending the concession. The statute does not confer a right on the prisoner to claim furlough. Rather, the same is merely a concession that may be extended by the Government upon fulfillment of the conditions prescribed therein. The object behind the Act of 1988 is to promote good conduct and respect for law amongst the prisoners by rewarding reformatory behavior. The same being in the nature of a concession, no vested right accrues in a prisoner to claim furlough.

11. The conduct of the petitioner in the instant case does not inspire any confidence. Despite being convicted of an offence under Section 307 IPC, the petitioner along with his sons butchered the victim/witness in the earlier case i.e. FIR No.74 dated 08.04.2009, during

the concession of suspension of sentence. The petitioner thus showed scant regard to the rule of law and preferred vengeance to peace and to take pride in the acts aimed to instill fear amongst people who believe in rule of law. The complainant-Pankaj Bansal {the son of the deceased (the victim/witness in FIR No.74 dated 08.04.2009) in FIR No.222 dated 31.08.2013} expressed an apprehension to his life and that of members of his family before the District Magistrate in the event of grant of concession of furlough to the petitioner. Prior conduct of the petitioner corroborates the apprehensions expressed by the complainant. Merely because the petitioner has remained confined in the prison and had no opportunity to avenge his conviction cannot mean that the petitioner has reformed and there is no threat to the complainant and members of his family. An absence of opportunity cannot be claimed as a proof of reform. The conduct of the petitioner do not support the argument of petitioner that the apprehension expressed by the complainant are conjectural and without any valid foundation.

12. We do not find any illegality or perversity in the order passed by the Divisional Commissioner, Hisar. The petition is thus devoid of any merit and is accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

11.01.2022

S.Sharma(syr)

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>