

217 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARHCRWP-8913-2022 (O&M)
Date of Decision:14.11.2022

Mandep @ Motha

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present:- Mr. Raman Chawla, Advocate for the petitioner.

Mr. Vivek Saini, Addl. A.G. Haryana.

TEJINDER SINGH DHINDSA J.(Oral)

Challenge in the instant petition is to the order dated 14.10.2021 (Annexure P-1) passed by the Divisional commissioner, Rohtak Division, Rohtak vide which the application filed by the petitioner for release on furlough has been rejected.

Reply by way of affidavit of the Superintendent, District Jail, Karnal along with Annexure R-1 has been filed.

Uncontroverted factual premise is that the petitioner was convicted on 02.07.2018 by the learned Additional Sessions Judge, Bhiwani in case FIR No. 56 dated 21.02.2014, under Sections 302 and 120-B IPC and Section 25 of the Arms Act, Police Station Tosham and was sentenced as under:-

<i>Under Section</i>	<i>Imprisonment</i>	<i>In default of payment of fine</i>
<i>302 read with Section 120-B IPC</i>	<i>Rigorous imprisonment for life and fine of Rs. 2,00,000/-</i>	<i>Simple imprisonment for six months</i>
<i>25 of Arms Act</i>	<i>Rigorous imprisonment for two years and fine of Rs. 10,000/-</i>	<i>Simple imprisonment for one month</i>

Petitioner is presently confined in District Jail, Karnal.

Petitioner moved an application for release on furlough to meet his family members and the same was forwarded by the Jail Superintendent, District Jail, to Deputy Commissioner Bhiwani.

However, vide impugned order the prayer of the petitioner has been rejected by adopting a reasoning as would be discernible from the impugned order itself and which is as follows:-

“ According to the report of the Superintendent of Police, the prisoner's family is able to meet in jail as per rules. The prisoner is a habitual offender. The prisoner can commit any crime by coming on furlough and can be absent. Therefore, it is not recommended to grant furlough to the prisoner. Apart from this 11 other cases have also been registered against the prisoner. Out of which the prisoner is undergone in 3 cases and 1 case have pending in the Court and he was convicted in 2 cases and acquitted in 5 cases.”

Counsel for the petitioner has argued that the concession of furlough could not have been denied as the petitioner's conduct in jail has been without blemish. The prayer would otherwise be covered in terms of the Haryana Good Prisoners (Temporary Release) Act, 1988 (for short 'the 1988 Act').

Per contra, learned State counsel has justified the passing of the impugned order by contending that the petitioner has no absolute legal right to claim furlough. Further contended that the petitioner does not have clean antecedents as he is involved in a number of criminal proceedings.

We have heard counsel for the parties at length.

We find that in the instant petition there are categorical averments made in paragraph 2 that the Superintendent, District Jail Bhiwani, District Bhiwani, having received the application of the petitioner for grant of

furlough at the first instance had forwarded the same with the recommendation that the petitioner is entitled to furlough as per provisions of the 1988 Act.

In the reply there is no rebuttal to such assertion. Petitioner was seeking furlough to meet his family members. In the impugned order it has been observed that the prisoner's family can meet him in jail as per rules. We do not approve of such reasoning. One of the clear objectives of releasing a prisoner on furlough is to enable the inmate to maintain continuity with his family life and to deal with the familial and social matters. Such objective is part of the reformatory process. A convict being released on furlough to have interaction and company of his family members in the confines of his house, cannot be equated to the family members meeting up with the inmate/convict within the jail premises.

Even though in the impugned order there is a long list of FIRs in which the petitioner is stated to have been involved but it would be apposite to take note that in a number of matters either the petitioner has been acquitted or the sentenced imposed has been undergone.

Undoubtedly, parole or furlough is a concession granted to a prisoner. However, grant of such concession is regulated by a statute and on fulfilment of conditions prescribed therein.

The authorities concerned while considering a request for furlough/parole cannot act arbitrarily, capriciously or without due application of mind. We find that the impugned order has been passed in a routine and mechanical fashion only by reciting that if such concession is granted, the prisoner can commit any crime and as such there would be apprehension regarding disturbance of law and order. However, no

foundation/material has been adverted to in the reply or by learned State counsel during the course of arguments to justify such apprehension.

Even otherwise no provision of the 1988 Act has been cited which would be seen as a bar/impediment for the release of the petitioner on furlough. In our considered view, the impugned order as such cannot sustain.

For the reasons recorded above, the instant criminal writ petition is allowed.

The impugned order dated 14.10.2021 (Annexure P-1) passed by the Divisional Commissioner, Rohtak Division, District Rohtak, is set aside.

Petitioner is held entitled to the concession of furlough for a period of two weeks. Authority concerned is directed to pass necessary orders for temporary release of the petitioner on furlough for a period of two weeks subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behaviour during the period of furlough and to also surrender in the jail after expiry of such period.

Petition is allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK GUPTA)
JUDGE

14.11.2022
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No