

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRWP-8858-2022 (O&M)
Date of Decision:10.11.2022

Shahbaj Singh

... Petitioner

Versus

State of Haryana & others

... Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE SANJIV BERRY.**

Present:- Mr. Rubal Garg, Advocate
Mr. Sonpreet .S. Brar, Advocate for the petitioner.

Mr. Vivek Saini, Addl. AG, Haryana.

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SANJIV BERRY, J. (ORAL)

The instant petition has been filed challenging the impugned order dated 25.08.2022 (Annexure P-5) passed by respondent No. 2 vide which the application for grant of parole to the petitioner had been declined by the Divisional Commissioner, Ambala Division, Ambala, on the ground that the petitioner falls into the definition of a '*hard-core criminal*' and has also sought directions to the respondents for granting parole to the petitioner to enable him to meet his family members.

A perusal of the paper book reveal that the petitioner is undergoing life imprisonment under Section 302 of IPC in case FIR No. 345

dated 01.07.2016 under Sections 302, 376-A IPC and 6 of POSCO Act registered at Police Station Sadar, Thanesar, District Kurukshetra and the said conviction had been challenged vide appeal number CRA-D-750-DB of 2018, which is lying admitted before this Court.

After issuance of notice of motion on 14.09.2022, respondents No. 1 to 5 filed their reply way of an affidavit dated 07.10.2022 , wherein it was submitted that the petitioner cannot claim parole as a matter of right as this is only a concession given to the prisoners for good conduct on certain grounds.

Learned counsel for the petitioner contends that petitioner is in custody since 02.07.2016. He had filed his first regular parole application under Section 3 (2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 for a period of 07 weeks, which was considered and rejected by the Divisional Commissioner, Ambala Division, Ambala, by passing the impugned order dated 25.08.2022 (Annexure P-5), after considering the reports of Superintendent of Police, Kaithal, and District Magistrate, Kaithal, solely on the ground that the petitioner-convict falls under the category of '*hardcore criminal*' and if he is granted parole he would commit serious crime.

Learned counsel for the petitioner contends that the action of not granting parole to the petitioner is not just a punishment to the petitioner but to his family as well. He further submits that the conduct of the petitioner has been good and cooperative in jail, as is clear from the

recommendation (Annexure P-4), so made by the Jail Superintendent, District Jail, Kurukshetra. He further submitted that the offence for which the petitioner has been convicted does not fall in the category of '*hardcore criminal*' as no penetrative sexual assault is therein alleged, as per the requirement or Rule 2(g)(5) and 2(g)(6) of the Haryana Good Conduct of Prisoners (Temporary Release) Act, 2022.

Learned counsel refers to the judgments of this Court in **Aman Singh vs. State of Haryana, 1997 (4) RCR (Criminal) 287** and **Mehboob vs. State of Punjab through Director General of Prisons, 2002 (4) RCR (Criminal) 463**, to contend that parole cannot be refused on the ground that there was apprehension of peace and it is the duty of police and the District Magistrate to give protection to the people.

However, learned State counsel submits that as per Haryana Good Conduct Prisoners (Temporary Release) Act, 2022, a prisoner cannot claim parole as a matter of right as it is the only concession given to the prisoner for his good conduct and on certain conditions.

We have given our thoughtful consideration to the matter and have also gone through the record with the assistance of learned counsel for the respective parties.

Hon'ble Apex Court in **Asfaq vs. State of Rajasthan and others, 2017 (15) SCC 55** while dealing with the issue of provisions of parole and furlough, has held that a humanistic approach is to be adopted against those who are lodged in jails. It has been held therein that furlough is

a brief release from the prison which is conditional and is given in case of long term imprisonment which is granted as a good conduct remission. His release from jail for 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 and the convicts too must breathe fresh air for at least some times provided, they maintain good conduct consistently, during incarceration and show a tendency to reform themselves to become good citizens. Thus, the redemption and rehabilitation of such prisoners for good of society must receive due weightage while they are undergoing sentence of imprisonment. Hon'ble Apex Court has further clarified that the provisions of parole and furlough thus provide for humanistic approach towards those lodged in jails. Even citizens of the country have a vested interest in preparing offenders for successful re-entry into the society after their release. Those who leave prisons without a strong network of support, employment prospects, fundamental knowledge of the community to which they will return and without resources stand a significantly higher chance of failure. Furlough or parole can help the offenders prepare for success. 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 such crime he ceases to be a human being and he can be deprived of those aspects of life which constitutes human dignity. It has been emphasized that the parole programme should be used as a tool to shape such adjustments.

Further 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.

In the present case the benefit of parole has been declined to the petitioner vide impugned order dated 25.08.2022 (Annexure P-5) on the ground that convict falls under the '*hardcore criminal*' and if convict is granted parole it cannot be denied that he would commit some serious crime and also placed reliance on the report of the District Magistrate, Kaithal, and Superintendent of Police, Kaithal, not recommending the grant of parole to the petitioner. It is clear from the report of the Superintendent, District Jail, Kurukshetra, (Annexure P-4) that the petitioner is being in jail for more than 05 years. He has not committed any jail offence nor is there any other case pending against him and such the Superintendent of Jail had recommended his first parole. The reasoning given in impugned order to the effect that if convict is granted parole, it cannot be denied that he would commit some serious crime is, thus, not sustainable as mere likelihood of committing a crime while being on parole would not be sufficient ground to deny the temporary release as such apprehension cannot be taken as threat to the security of the state or maintenance of public order. The mere fact that a

person is convicted of an offence does not ipso facto mean that he may abscond or commit a crime if released temporarily as it is always open to the authorities to impose stringent conditions to guard against such eventualities.

It appears that the competent authority while passing the impugned order dated 25.08.2022 (Annexure P-5) acted mechanically and as such we feel, in the circumstances mentioned above, that the impugned order is without any sustainable reasons and accordingly the present petition is allowed by setting aside the impugned order dated 25.08.2022 (Annexure P-5). The petitioner shall be released on parole for the period of six weeks on his furnishing the requisite bail bonds to the satisfaction of the competent authority and he shall surrender back in time in jail premises on the expiry of the said period after his release from jail.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

10.11.2022
Preeti/Gyan

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |