

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

(239)

**CRWP-12205-2021 (O&M)
DATE OF DECISION:- 13.05.2022**

SUSHIL KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. D.S.Virk, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana
for the respondents.

SUVIR SEHGAL, J. (ORAL)

CRM-W-523-2022

Application is allowed as prayed for.

Judgment dated 18.02.2020 and order of sentence dated 19.02.2020 passed by learned Additional Sessions Judge, Special Court, Kaithal, are taken on record as Annexure P-2 (colly).

Main case

Petitioner has approached this Court under Article 226 of the Constitution of India read with Section 3 (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release), Act, 1988 (for brevity hereinafter referred to as “the Good Conduct Act”) for quashing of order dated 02.09.2021, Annexure P-1, passed by Divisional Commissioner, Karnal Division, Karnal-respondent No.2, whereby application of the petitioner for release on parole has been rejected.

Counsel for the petitioner submits that the petitioner has been convicted and sentenced, vide judgment, Annexure P-2, in FIR No.73 dated 31.03.2019, registered at Police Station Kalayat, District Kaithal to undergo rigorous imprisonment for ten years under Section 376, IPC and for five years under Section 366, IPC besides fine. Counsel submits that both the sentences have been ordered to run concurrently and Criminal Appeal, CRA-S-521-2021, filed by him is pending before this Court. He submits that the petitioner has applied for four weeks parole for repair of his house, which has been illegally declined by respondent No.2, vide impugned order on unsustainable grounds.

On the other hand, State counsel has opposed the petition and has referred to the reply filed by way of an affidavit on behalf of the respondents to urge that the parole case of the petitioner has not been recommended by the District Magistrate, Kaithal on the ground that the petitioner has family members, who can carry out house repairs. It has been argued that the petitioner and the prosecutrix are residents of the same village and there is an apprehension of clash between them. She has filed Custody Certificate of the petitioner dated 12.05.2022, which is taken on record.

I have considered the respective submission of counsel for the parties.

It is the specific stand of the respondents that the petitioner does not fall in the category of a hardcore prisoner under Section 2 (aa) of the Good Conduct Act. A perusal of the Custody Certificate filed by the State shows that the petitioner has undergone custody of more than three years and seven months and he is not involved in any other criminal case.

Although, parole is not a vested right of a prisoner, rather it is a right granted by a statute and can be declined in case the temporary release of a prisoner is likely to cause any danger to the security of the State or disturb the public order or there is any reasonable apprehension of breach of peace. The apprehension of the State must be based on some material in its possession from where it can be inferred that the breach is likely to occur in case the convict is released temporarily. However, no such material has been brought on the record nor any such material could be referred to by the respondents during the course of arguments. The apprehension expressed by the respondents that the convict may come in contact with the prosecutrix leading to breach of peace or public order, is not substantiated. There is nothing to show that there is any enmity between the family of the petitioner and the prosecutrix or her family members. In any case, this aspect can be taken care of while by imposing reasonable conditions on the petitioner at the time of his release.

Sub Section (d) of Section 3 of the Good Conduct Act provides for the temporary release “for any other sufficient cause”. This Court in *Jeet Singh Versus State of Punjab and others 2020 (3) RCR (Criminal) 516* has held that house repair would fall within the ambit of “sufficient cause”. Therefore, the application of the petitioner, deserves to be accepted.

Consequently, the writ petition is allowed and impugned order dated 02.09.2021, Annexure P-1, is quashed. The petitioner is ordered to be released on parole for a period of four weeks from the date of release to the satisfaction of the District Magistrate concerned, who is directed to impose such conditions as may be necessary to secure the presence of the petitioner in jail after the parole period is over and to

ensure that temporary release is not misused. In addition, while being released on parole, the petitioner will furnish an affidavit to the effect that he will not directly or indirectly contact or meet the prosecutrix or her family members or threaten or intimidate or harm them, physically or electronically or by any other means, during the parole period. Liberty is also granted to the authorities concerned to impose any other condition, they deem necessary in order to ensure that the petitioner surrenders on the completion of the parole period and that he does not misuse the concession being granted to him. Breach of any condition imposed, would lead to the immediate cancellation of the release order.

13.05.2022
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No