

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204

CRWP No.21 of 2022

Date of Decision: March 04, 2022

Jitender

....Petitioner

VERSUS

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

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

Mr. Hitesh Pandit, Addl. A.G. Haryana.

G.S. SANDHAWALIA, J(Oral).

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India is for quashing of the order dated 29.11.2021 (Annexure P-1) passed by the Commissioner, Rohtak Division, Rohtak, whereby furlough case of the petitioner has been declined.

The relief is sought under the provisions of Section 4 (1), (a), (b), (2) and 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. The reasoning in the impugned order is that the possibility of disturbance of peace in the colony could not be ruled out. While arriving at the conclusion that the convict is not entitled for furlough, the report of Superintendent of District Jail, Rohtak was not accepted while agreeing with the negative reports of District Magistrate, Rohtak and Superintendent

of Police, Rohtak. The reasoning was given that two more FIRs in the years 2011 and 2016 had been registered against the petitioner.

Counsel for the petitioner has submitted that the petitioner is undergoing sentence in FIR No.452 dated 29.10.2017 under Sections 302, 304-B and 498-A IPC registered at Police Station Urban Estate, District Rohtak and his criminal appeal No.CRA-D-362-2019 is pending before this Court for adjudication. It has been further submitted that he had maintained good conduct while undergoing the sentence and is entitled for the said benefit of furlough. It is further contended that even as per the reply filed by the State, it is admitted that in FIR No.701 dated 14.12.2011 registered at Police Station Civil Lines, Rohtak, the petitioner has already been acquitted, whereas in another FIR No.558 dated 17.07.2016 registered at the same police station, he is on bail. It is accordingly submitted that out of actual undergone period of 4 years, 2 months and 17 days, he has been in custody since 16.11.2017 and has never availed the benefit of parole or interim bail. It is accordingly argued that the petitioner has earned his furlough as there is no jail offence against him and the purpose of provisions of Section 4 of the Act have been lost sight by the deciding authority. It is submitted that it is a right which lies under the Act if the convict does not commit any jail offence and on earning 3 actual good conduct remissions, he is entitled for the benefit of furlough.

It is not disputed that even in the impugned order, it has been noted that the Superintendent, District Jail, Rohtak has recommended the petitioner for furlough as per the provisions of the Act. It is only on account

of adverse reports by the District Magistrate, Rohtak and Superintendent of Police, Rohtak, Divisional Commission has denied the said benefit. As has been pointed out by the counsel, the petitioner has earned acquittal in one FIR and is on bail in the other FIR. Only on account of the lodging of such FIRs way back in the year 2011 and 2016, the right of furlough cannot be denied, which fact has not been taken into consideration by the competent authority, whereas while filing the reply, the factum of acquittal in the FIR has been admitted.

Similarly, it is to be seen that the competent authority never took into consideration that the petitioner has been convicted on account of offences which arose out of matrimonial dispute. Therefore, the reasoning of disturbance of peace in the colony appears to be a figment of imagination and seems to be alien for the purpose of rejecting the claim of furlough. 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.

Thus, for the above said reasoning, this Court is of the opinion

that the impugned order is not liable to be sustained and is accordingly

quashed. Accordingly, directions are issued to the District Magistrate, Rohtak to release the petitioner on furlough for a period of three weeks as per the provisions of the Act, subject to furnishing requisite bonds to his satisfaction. The petitioner shall surrender before the Superintendent, District Jail, Rohtak after the expiry of the said period.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 04, 2022
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No