

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-348-2023 (O&M)
Date of Decision:- 31.1.2023

Mahender @ Patwari and another ... Petitioners

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Hoshiar Singh Jaswal, Advocate, for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioners have approached this Court seeking grant of parole for 4 weeks so as to participate and attend the marriage of real brother of petitioner No.1 and who is brother-in-law of petitioner No.2, as both the petitioners are husband and wife.
2. Learned counsel for the petitioners has submitted that although the petitioners had approached the jail authorities on 03.1.2023 and had requested to fill-up the Proforma (Form A-1) for grant of parole, but Superintendent, District Jail, Yamuna Nagar, did not accede to the request and consequently, the petitioners have been constrained to

approach this Court. Learned counsel has submitted that apparently their request had been orally declined since on an earlier occasion the petitioners were declined furlough vide order dated 16.12.2022 on the premises that the petitioners are hardcore prisoners whereas they cannot be termed as hardcore prisoners as the only other case against petitioner No.1 under NDPS Act is still pending, wherein he has been granted bail. Learned counsel has further submitted that although, previously there were instructions to the effect that convicts in the same case cannot be released together on parole/furlough but exceptions have now been drawn therein to the effect that convicts who are husband and wife or members of the same family, can be released together as shown in letter dated 27.1.2023, issued by the Director General of Prisons, Haryana.

3. Opposing the petition, learned State counsel has submitted that since the petitioners never applied for grant of parole, therefore, this Court cannot entertain the instant petition and that they would be first required to apply to the authorities concerned before approaching this Court. He has assured that in case, the petitioners apply for the same, the authorities concerned shall dispose of the same within a period of 2 days from today.
4. This Court has considered the rival submissions.
5. The State counsel pursuant to directions issued by this Court on the last date of hearing has furnished information in the shape of details of parole availed by both the petitioners. Petitioner No.1-Mahender @ Patwari is stated to have availed parole on 16 occasions between

the period 2010 to 2021 and is never stated to have overstayed. Similarly, petitioner No.2-Kamlesh is stated to have availed parole/furlough on 7 occasions between the period 2015 to 2021 and is not stated to have overstayed on any occasion. Petitioner No.1 is stated to have undergone custody to the extent of 18 years, 4 months and 15 days including remissions. Petitioner No.2 is stated to have undergone custody to the extent of 19 years, 7 months and 29 days including remissions. It has also been informed that while petitioner No.1-Mahender is involved in one more case under NDPS Act, petitioner No.2-Kamlesh is not involved in any other case.

6. Having regard to the facts and circumstances of the case particularly bearing in mind the previous record of the petitioners, a perusal of which would indicate that they had never misused the concession of parole on the previous occasions, the petition is disposed off with a direction to the Superintendent, District Jail, Yamuna Nagar, to consider and dispose of the application, as may be made by the petitioners for grant of parole within a period of 2 days from today. Respondent No.2-Superintendent, District Jail, Yamuna Nagar, is directed to entertain such application and to take a sympathetic view particularly keeping in view the previous conduct.
7. Since, the petitioners apprehend that their application may be declined by branding them a hardcore prisoner, the authorities concerned are directed to examine the said question in view of the latest pronouncements, particularly bearing in view the fact that the other offence alleged to have been committed by petitioner No.1 was committed five years ago.

8. A copy of this order be supplied to learned counsel for the petitioners under signatures of Bench Secretary of this Court.

31.1.2023
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(GURVINDER SINGH GILL)
JUDGE

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