

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRWP-2432-2023****DATE OF DECISION: 16.05.2023****RANDHIR SINGH****.....PETITIONER****VS.****STATE OF PUNJAB AND OTHERS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN****Present:** Ms. Bhupinder Pal Kaur Brar, Advocate,
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

***********HARPREET KAUR JEEWAN, J.**

1. The petitioner Randhir Singh has filed the present petition challenging the order dated 26.12.2022 (Annexure P-2) whereby his application for grant of parole has been rejected by the Additional Director General of Police (Prisons), Punjab.

2. As per the custody certificate, the petitioner is undergoing the sentence awarded by Ms. Saru Mehta Kaushik, Additional Sessions Judge, Sangrur, vide order dated 16.08.2021, whereby the petitioner has been convicted under Section 302 read with Section 34 of the IPC and sentenced to undergo rigorous imprisonment for 20 years along with payment of fine of ₹20,000/- and in default to further undergo rigorous imprisonment for 1 year, in case FIR No. 107, dated 15.10.2019, under Sections 302/34 of the IPC, registered at Police Station Khanauri, District Sangrur.

3. Learned counsel for the petitioner has submitted that on 21.04.2022, the petitioner applied for 08 weeks parole to meet his family members under Sections 3 (1) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act of 1962'), The Superintendent Central Jail, Goindwal (respondent No. 4) initiated and recommended the parole case and forwarded the same to District Magistrate, Jind, as well as to Director General of Police, Jail Department, Punjab. However, his application has been declined by the District Magistrate, Jind (respondent No. 3), on the ground that the Superintendent of Police, Jind has not recommended the parole of the petitioner, as the petitioner is not having permanent residence in Jind. The maternal-uncle of the petitioner is a permanent resident of Jind and he has submitted in his affidavit that he is responsible for his nephew. Even the Gram Panchayat has given no objection as per Annexure P-1. The father of the petitioner has filed an affidavit dated 27.03.2023 (Annexure P-4) submitting that his son (petitioner) wants to avail eight week's parole to meet his maternal-uncle Charan Singh, son of Sila, resident of Village Thua, Police Station Alewa, District Jind (Haryana). His release on parole was not recommended by the Gram Panchayat of his Village Karounda, Tehsil Moonak, District Sangrur and therefore, he is sending him to his maternal-uncle to avail parole. It was submitted that rejection was not justified.

4. On the other hand, the learned counsel for the State, referring to the short reply dated 02.05.2023, filed by Sh. Gurcharan Singh Dhaliwal, Superintendent Central Jail, Shri Goindwal Sahib, submitted that the parole case of the petitioner was forwarded to District Magistrate, Jind (Haryana)

but a verification report was received from District Magistrate, Jind to the office of the Additional Director General of Police, Punjab, Chandigarh, vide letter dated 06.12.2022 and the parole was not recommended on the ground that the petitioner is not having any permanent residence in Haryana and there is no cogent/rationale reason for availing the parole at his maternal-uncle's residence. As such, after considering the report of the District Magistrate, Jind and the Superintendent of Police, Jind (Haryana), the request for parole was declined by Additional Director General of Police (Prisons), Punjab, vide order dated 26.12.2022 (Annexure P-2).

5. We have considered the above submissions.

6. As per the custody certificate, the petitioner has undergone actual period of 02 years, 09 months and 24 days and he has not availed any parole or furlough during this period. The request of the petitioner for grant of parole was declined merely on the ground that he wants to stay along with his maternal-uncle where he is not having any permanent address. The affidavit filed by the father of the petitioner indicates that the Panchayat of his village where he is residing was not supporting for release of his son on parole. The Additional Director General of Police (Prisons), Punjab, has not observed if the petitioner intend to avail the parole in the house of his maternal-uncle for any ulterior motive or that he can take part in illegal activity if he is released on parole. The reasons recorded by Additional Director General of Police (Prisons) Punjab, does not refer about his opinion based upon application of his free, independent and judicious mind regarding relevant statutory provisions. The grounds of rejection of parole *de hors* any legal parameters & philosophy underlying

the release of prisons to parole.

7. The temporary release of prisoners is dealt under by the provisions of “The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Section 3 of the said Act deals with various contingencies upon which a prisoner can be temporarily released while undergone sentence. The said Section is reproduced as under:-

“3. Temporary release of prisoners on certain grounds:-

(1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoners if the State Government is satisfied that-

*A member of the prisoner's family has died; or
(aa) husband of wife or son or daughter or mother or brother or sister or grand-father of grant-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or*

the marriage of the prisoners son or daughter is to be celebrated; or

the temporary release of the prisoners is necessary for ploughing, sowing of harvesting or carrying on any other agricultural operation, on his land or any other land cultivated by him and no friend of the prisoner or a member of the prisoners family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant or is likely to deliver a child; or

(d) It is desirable so to do for any other sufficient cause

[Explanation:- The expression “sufficient cause” includes-

(1) Serious damage to life property of the member of the family caused by any natural calamity; or

(2) Critical condition of any member of the family on account of accident; or

(3) *Delivery of child by the wife of the prisoner.]*

(2) *The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-*

(a) *where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), fifteen days;*

(b) *where the prisoner is to be released on the ground specified in clause (aa) or clause (b) of clause (c) or clause (d) of sub-section (1), eight weeks; and*

(c) *where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days) prior to the date of delivery of child and sixty days after delivery of child.*

2-A *The total period of temporary release of the prisoner, excluding the release availed of,-*

i. *On the death of a family member of the prisoner; or*

ii. *By a female prisoner on account of delivery of child, as the case may be shall not exceed sixteen weeks, during a calendar year and shall be availed on quarterly basis:*

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a one time measure on prodata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is own temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so:

Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases Act, 1897, the State Government may, by a special notification published in the official gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis.

(3) *The period of release under this Section shall not count towards the total period of the sentence of the prisoner.*

(4) *The State Government may by notification authorize any officer*

to exercise its power under this Section in respect of all or any of the grounds specified therein.”

8. As per sub-section (1) (d) of Section 3 of the Act, upon the satisfaction of the State Government in consultation with the District Magistrate, a prisoner can be temporary released for any sufficient cause. As per the custody certificate, the petitioner was in custody even during trial and he is continuously in custody for a period 02 years, 09 months and 24 days and not availed even a single parole or furlough. To meet their families by the prisoners is very essential for their emotional health and certainly it is a “sufficient cause” to release a prisoner on parole. The petitioner is not a hardcore prisoner. Neither there are any grounds for declining him parole as mentioned under Section 5-A of the Act.

9. Subject to various parameters laid down in the Act of 1962, release of a prisoner on parole to meet his family members is part of human rights. The provisions of parole and furlough are based on humanistic approach and while dealing with the said provisions, the Hon'ble Apex Court in **Asfaq vs. State of Rajasthan and others** 2017 (15) SCC 55 held as under:-

“15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of

failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.”

10. Keeping in view the above, we are of the considered opinion that the order dated 26.12.2022 (Annexure P-2) passed by the Additional

Director General of Police (Prisons), Punjab, is not legally sustainable and is accordingly set aside.

11. Consequently, the petition is allowed and the petitioner Randhir Singh is granted the parole for a period of 6 weeks subject to the condition that he would report to the Station House Officer of the concerned Police Station once in a every week on Monday.

12. Pending miscellaneous application (s), if any also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

MAY, 16 2023
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Whether Speaking	Yes
Whether Reportable	No