

CRWP-3310-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Date of decision: 01.09.2023

(1) CRWP-3310-2022

Gursharan Singh

V/sPetitioner

State of Punjab and others

....Respondents

(2) CRWP-3217-2022

Ranjit Singh

V/sPetitioner

State of Punjab and others

....Respondents

(3) CRWP-3241-2022

Lakhwinder Singh

V/sPetitioner

State of Punjab and others

....Respondents

(4) CRWP-3244-2022

Gurbhej Singh

V/sPetitioner

State of Punjab and others

....Respondents

(5) CRWP-3226-2022

Lal Singh

V/sPetitioner

State of Punjab and others

....Respondents

(6) CRWP-3303-2022

Jarnail Singh

V/sPetitioner

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner(s).

Mr. Amarinder Singh, Advocate
Amicus curiae in CRWP-3217-2022.

Mr. DheerajJain, Advocate
Amicuscuriae CRWP-3226-2022.

Mr. Madhur Sharma, AAG Punjab.

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ARUN MONGA, J.

Question that looms in the case in hand is whether involuntary/forced parole is to be regarded as suspension or substitution of sentence? Prisoners granted compulsory parole during the unprecedented Covid-19 pandemic are before this Court. Words of imprisoned poet Oscar Wilde¹ resonate in the ears, also quoted by Apex Court in a Constitution Bench Judgment rendered in Maru Ram v UOI². The verses of Wilde, depicting the stark interplay of despondency, hope and stir of those incarcerated and beseeching Court's indulgence, are as below:

*I know not whether Laws be right,
Or whether Laws be wrong,
All that we know who lie in gaol
Is that the wall is strong;
And each day is like a year,
A year whose days are long.
* * * * **

*Something was dead in each of us,
And what was dead was hope.
* * * * **

*The vilest deeds like poison weeds
Bloom well in prison air;
It is only what is good in Man
That wastes and withers there;
Pale anguish keeps the heavy gate,
And the Warder is Despair.”*

And, in the aforementioned context, thus spoke His Lordship Krishna Iyer, J., for the majority, in **Maru Ram** *ibid*: -

“But broken hearts cannot break prison walls. Since prisons are built with stones of law, the key to liberation too is in law's custody. So, counsel have piled up long and learned arguments punctuated with evocative rhetoric. But Judges themselves are prisoners of the law and are not free to free a prisoner save through the open sesame of Justice according to law. Even so, there is a strange message for judges too in the rebellious words of Gandhiji's quasi-guru David Thoreau:”

¹ *The Ballad of Reading Gaol*
² (1981) 1 SCC

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“The law will never make men free; it is men who have got to make the law free. They are the lovers of law and order who observe the law when the government breaks it.”

2. Bunch of six petitions is being disposed of by the instant common order as material facts are analogous and relief claimed is same. Recitals are taken from CRWP No. 3310 of 2022, *Gursharan Singh vs. State of Punjab and others*.

2.1 Petitioner was tried, convicted, and sentenced by learned Sessions Court, Amritsar in FIR No. 90 dated 11.07.2007 under sections 302, 307, 326, 325, 324, 323, 148 read with Section 149 IPC and Section 27 of the Arms Act, 1959. He was awarded life imprisonment. In an appeal, decided by this Court vide judgment dated 09.01.2019, the petitioner's conviction was confined to section 307 read with 34 of Indian Penal Code and his sentence was reduced to five years' imprisonment and fine of Rs. 8,250/-, in default of payment of fine to undergo simple for a period of 03 years, 05 months and 15 days.

3. During COVID-19, the petitioner was temporarily released on parole. The claim in petition is for a direction to the respondents to count the Covid-19 pandemic Special parole period, granted on the recommendations of the State Level HPC, towards actual sentence and to release the petitioner.

4. Respondents' stand is that in view of Sub Section (3) of Section 3 the of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, the period of said temporary release cannot be counted towards the total period of sentence of a prisoner.

4.1. Learned State counsel would also rely on the decision of the Supreme Court in the case of **Anil Kumar vs. State of Haryana**³, wherein a similar prayer for counting the Covid-19 special parole granted to the prisoners

³2023 SCC Online SC 334

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lodged in jails of State of Haryana, was rejected by State and said rejection was upheld by the Court.

5. Background facts for the petitioner's temporary release on parole are succinctly narrated hereinafter.

5.1 The Apex Court passed an order dated 23.03.2020 in **Suo Motu Writ Petition (C) No. 1/2020 Re: Contagion of Covid-19 virus in prisons, *inter alia***, directing as under:

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19). Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of

- (i) Chairman of the State Legal Services Committee,*
- (ii) the Principal Secretary (Home/Prison) by whatever designation is known as,*
- (iii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate.*

For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

5.2 In compliance with the above said order, State of Punjab constituted a High Powered Committee (for short HPC) comprising of the Executive Chairperson, Punjab State Legal Services Authority as its Chairperson and the Principal Secretary to Government, Punjab, Jails Department, Punjab; Additional Director General of Prisons, Punjab and the Member Secretary, Punjab Legal Services Authority as its members.

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5.3 The HPC vide minutes of its meeting on 25.03.2020, recommended that in order to decongest the prisons, the convicts should be released on 6 months' parole and also made recommendations about the procedure and criteria for such release. Vide minutes of its subsequent meetings held on 02.05.2020, 31.07.2020, 18.11.2020, 26.11.2020, 05.02.2021, 23.04.2021 and 10.05.2021, the HPC made recommendations for the extension of parole and criteria for such extension. These recommendations of the HPC were forwarded to the concerned authorities by respondent No.1 vide memos/letters dated 02.05.2020, 07.08.2020, 20.11.2020, 10.02.2021, 27.04.2021 and 11.05.2021 for implementation/compliance.

5.4 On the recommendations of the High Powered Committee forwarded to the concerned authorities by respondent No. 1, the petitioner was directed to be released on parole. He remained on temporary parole 28.03.2020 to 19.03.2021 and again from 24.05.2021 to 24.08.2021. Said parole periods have not been counted as part of the sentence. Hence the instant petition.

6. I have heard the learned Amicus Curiae and the learned State counsel.

7. Learned Amicus Mr. Amarinder filed his written submissions which *inter alia* contain following arguments:

a. **Covid parole is to be counted as part of sentence in terms of Supreme Court judgment.**

Admittedly, the HPC has though set out different criteria for grant of parole and has formulated certain procedures, but it does not specify explicitly that the period of Covid Parole is to be excluded for the purpose of sentence of prisoner. If it is held that Covid Parole is under the Act then the restrictions under Section 3(3) of the Act would apply, consequently the period of parole would not be counted towards the total sentence. On the other hand, if it is held that Covid Parole is not under the Act then as per the decision of Supreme Court judgment in **Sunil Fulchand's case**, subsequently

reiterated in **Avtar Singh's case**, it could be safely said that period of Covid Parole would be counted towards the total sentence of prisoner.

b. **Parole under the Act:**

Under the Act, parole is granted to prisoner if certain conditions specified under Section 3(1) of the Act are met. The Act does not contemplate a 'forced parole' such as the Covidparole. A prisoner seeking parole is required to make an application under Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963. Superintendent of Jail forwards the application along with his report to District Magistrate, who after consulting Superintendent of Police of his District, forwards the case with his recommendations to Inspector General. The Inspector General then records his view whether prisoner is to be released and submits the same to the Releasing Authority for orders. District Magistrate verifies the facts on which release has been requested and after giving his opinion, necessary steps are taken for the release of prisoner or otherwise.

c. **Covid Parole did not follow the Statutory criteria:**

In case of Covid Parole, the above procedure was not followed and it was a parole granted to prisoner who met the requisite criteria. Therefore, argument is that Covid parole has not been granted under the Act/Rules. In other words, the source of power for grant of parole by High Power Committee (HPC), is not the Act but under the order dated 23.03.2020 of the Supreme Court. The HPC has not specified in its minutes of the meeting that the period of parole is to be excluded. Going by ratio rendered in Sunil Fulchand's case, the period of Covid parole ought to be included in the period of sentence.

d. **Other States:**

Haryana: The HPC constituted for State of Haryana has specifically mentioned in its minutes that the Covid parole is not to be counted towards the period of sentence. The said directions were challenged before Supreme Court in Anil **Kumar**⁴ and were upheld.

⁴ W.P. (Crl.) No.46 of 2020 dated 24.03.2023

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Delhi: The Government of NCT Delhi inserted Rule 1212A in the Delhi Prisons Rules, 2018, vide notification No. F 18/191/2015/HG/1379-1392 dated 23.03.2020. It included the Covid emergency parole given to convicts as part of sentence upto eight weeks.

Madhya Pradesh: The office of DG Prisons, Madhya Pradesh vide its notification dated 30.03.2020 has also decided to count the emergency leave/parole granted to convicts as part of sentence upto 60 days.

Maharashtra: The State of Maharashtra has not counted the period of parole as part of sentence of convicts. A convict prisoner had approached the Hon'ble Supreme Court in **Mubin Khan vs. State of Maharashtra**, Criminal Appeal No.1434/2012, a similar prayer for counting the sentence of Covid parole as period undergone was made. Vide order dated 28.10.2021, the Supreme Court asked the State of Maharashtra to take a policy decision with regard to the same.

8. Learned Amicus Curiae Mr. Dheeraj Jain also gave his independent written submissions in CrWP No.3226-2022, though on the same lines as above, nevertheless, are summed up as below: -

- A. Constitution Bench in “**Sunil Fulchand Shah**” held that Counting of Parole towards the actual sentence is the General Rule and not counting is the exception, i.e., if there are any specific orders, rules, or instructions to this effect.
- B. Scope of the Constitutional Bench in '**Sunil Fulchand Shah vs. Union of India**' enlarged by the 3 Judges Bench decision in '**Avtar Singh vs. State of Haryana and Anr**' to also apply to cases of parole after conviction.
- C. State of Punjab's provisions regarding temporary release – Section 3 and 4 of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 is not a bar.

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- D. Unlike Haryana, High Powered Committee DID NOT direct in Punjab that the COVID-19 Special Parole will not be counted towards actual sentence.
- E. Stipulation u/s 3(3) to not count period of parole only applies to Parol granted under Section 3 of the Act.
- F. The COVID-19 Special Parole, granted in pursuance of the Hon'ble Supreme Court's directions, cannot be considered to be granted under Section 3 of the Act.
- G. Judgment in Anil Kumar vs. State of Haryana in the case of Haryana, not applicable in the case of Punjab.

9. In course of arguments, referring to the minutes of the meetings containing the relevant recommendations of the HPC, Mr. Amarinder Singh, the learned Amicus Curiae would emphasize that they do not indicate how the period of the temporary release during Covid 19 pandemic was to be treated, whether their implementation would be governed by the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 or otherwise; and in the latter case, whether or not the period of such temporary release or any part of it would be counted towards the total period of sentence of the prisoner.

9.1. Learned Amicus also pointed out that while forwarding these recommendations of the HPC to the concerned authorities for implementation/compliance vide the aforesaid forwarding memos/letters, respondent No.1 also did not indicate how the period of the temporary release during Covid-19 pandemic was to be treated and whether their implementation would be governed by the 1962 Act *ibid* or otherwise; and in the latter case, whether or not the entire period of such temporary release or any part of it would be counted towards the total period of sentence of the prisoner.

10. I shall now proceed to discuss the aforesaid arguments/written submissions and render my opinion thereon in the succeeding paragraphs.

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11. As rightly pointed out by Mr. Amarinder Singh, there is nothing specified either in the minutes of the meetings containing the recommendations of the HPC (Punjab) or the aforesaid forwarding memos/letters of respondent No. 1 forwarding those recommendations of the HPC to the concerned authorities for their implementation/compliance to the effect that as to how the temporary release of the petitioner and other similarly placed prisoners during and owing to the Covid-19 pandemic was to be treated.

12. As against Punjab, in the case of Haryana, the HPC had a put a specific note that each parolee shall give declaration that period of parole shall not be claimed by him as period of sentence. The relevant portion thereof is reproduced below:

"Note: The period of release under aforesaid directions shall not be counted towards the total period of the sentence of the prisoner/convict. Further, the Jail Superintendent shall obtain declaration from the convict to the effect that he/she shall not claim counting of the period of special parole against the total period of sentence at the time of applying for special parole itself."

12.1 In the light of the aforesaid note, the Supreme Court ruled in Anil Kumar's case that the parole release process in Haryana would be governed by the existing statutory laws. This decision was thus based on the fact that the Haryana High Powered Committee (HPC) had recommended handling the issue in accordance with the statutory provisions, and it had explicitly stated that no specific directions were needed to exclude the special parole period from the total sentence. The Supreme Court primarily relied on the HPC, Haryana's recommendation to reach the conclusion that special Covid parole in Haryana is subject to statutory regulations and upheld its exclusion from the period of sentence. The Supreme Court did not consider any other factors besides the HPC minutes. Therefore, the essence of the judgment is that once the HPC has endorsed the statutory restrictions concerning exclusion that the time spent on parole would not be counted towards the total sentence. In the case of Anil Kumar, the Supreme

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Court did not address or consider the question whether special parole granted in response to orders issued in SWM (C) No. 1 of 2020 would be governed by the relevant statutory laws. High-powered committees, established in response to Supreme Court orders, issued various directives that either relaxed or suspended certain parole provisions. In some instances, these directives were subsequently incorporated into law. However, the Supreme Court in the Anil Kumar's case did not take these aspects into account. The decision in Anil Kumar's case was thus solely based on the fact that the HPC, Haryana, had explicitly acknowledged the applicability of statutory restrictions and issued appropriate instructions for compliance of the same.

12.2. That apart, applying the doctrine of *sub-silentio*, with utmost respect, even though, parole is generally treated as part of sentence, but said issue was not connected to the facts of the case in Anil Kumar and was thus not even taken up. As already discussed in preceding paragraph, in Anil Kumar judgment, the Supreme Court ruled in favor of Haryana State in the light of there being a specific recommendation/pre-condition of the HPC that release on parole was not to be counted towards period of sentence. *Qua* doctrine of *sub silentio*, reference may be had to Supreme Court judgment in Municipal Corporation of Delhi v. Gurnam Kaur⁵. It is held therein that judicial decisions are binding authorities only in relation to the principles upon which the case was decided, known as the *ratio decidendi*. Statements or observations that do not form part of the *ratio decidendi* are considered *obiter dicta* and lack authoritative weight. Supreme Court also emphasized that a decision made without considering relevant statutory provisions or without the benefit of legal arguments may be deemed as "*per incuriam*."

12.3. The decision in Anil Kumar *qua* the state of Haryana, will thus not be applicable in the case of Punjab.

⁵(1989) 1 SCC 101

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13. Adverting back to case in hand, in March 2020, the World Health Organization declared COVID-19 as a health emergency requiring immediate action by the State Governments to tackle its spread. Apex Court of India took its *suo-motu* cognizance and passed **order dated 23.03.2020, in Suo Motu WritPetition (C) No. 1/2020** of which the relevant extract has been reproduced above. It was in a situation of health emergency requiring immediate action and to comply with the orders of the Apex Court without losing any time that in Punjab the High Powered Committee was constituted and on receipt of its recommendations, the petitioner and a large number of other prisoners were temporarily released during the period of COVID-19 pandemic.

14. In my opinion absence of any specific directions/instructions in the minutes/ recommendations of the HPC and, the aforesaid memos/letters of respondent No. 1, as to how the period of temporary release of the prisoners during and owing to the Covid-19 pandemic is to be dealt with, appears to be accidental and not a deliberate omission. If the omission of specific instructions in that regard was not accidental, then the absence thereof would rather show that the respondents intended to count the period of said temporary release towards the total period of sentence of the prisoners.

14.1. On the same reasoning, I am unable to accept the contention of the learned State counsel that the temporary release of the petitioner and other similarly placed prisoners during and owing to the Covid-19 pandemic was and has to be treated under section 3 of the Act *ibid* 1962 and/or that in view of statutory prohibition in sub section (3) of section 3 thereof, the period of said temporary release cannot be counted towards the total period of sentence of a prisoner.

15. In **Sunil Fulchand Shah's case (*supra*)** relied upon by the leaned Amicus Curiae a Constitution Bench of the Apex Court held as under:

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“...The answer to the question, therefore, is that the period of detention would not stand automatically extended by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicate as a terms and condition of parole to the contrary. The period during which a detenu is on parole, therefore, requires to be counted towards the total period of detention.”

15.1 Relying upon this judgment, another bench of the Apex Court in **Avtar Singh’s case (*supra*)**, held as under:

“11.Parole is essentially an executive function and now it has become an integral part of our justice delivery system as has been recognized by the courts. Though the case of Sunil Fulchand (2000) 3 SCC 394: 2000 SCC (Cri) 645 was a case of preventive detention, we are of the opinion that the same principle would also apply in the case of punitive detention.”

16. Thus, the Constitution Bench by majority decision clearly held that the period of temporary release of a prisoner on parole is to be counted towards the total period of detention, unless it is otherwise provided by legislative Acts, rules, instructions or terms of grant of parole.

17. In the background of the aforesaid Supreme Court judgments, let us now examine the scope and applicability of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Section 3 reads 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 prisoner if the State Government is satisfied that -

- (a). a member of the prisoner's family has died; or*
- (aa). husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or*
- (b). the marriage of the prisoner's son or daughter is to be celebrated; or*
- (c). the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence;*
- (cc) a lady prisoner is pregnant and is likely to deliver a child; or*
- (d) it is desirable to do so for any other sufficient cause.*

Explanation. - The expression "sufficient cause" includes –

- (1) *serious damage to life or 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) or 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 the date of 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 of 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 onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is on 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.

⁶*[(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 of 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 onetime measure on pro-rata basis, however, subject to the other provisions of the Act]:

⁶ Substituted vide Punjab Act No.2 of 2019 dated 16.01.2019

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⁷ [Provided further that any prisoner, who is on 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 release of a prisoner.

(4) The State Government may by notification authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein."

(emphasis supplied)

Perusal of Section 3 supra shows that it provides limited and specific grounds for granting parole. *Inter alia*, it states 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.

17.1 In the case in hand, it is not shown if any special notification (contemplated in sub-section 2-A of section 3 of the Act) was published by the State Government in the official gazette allowing temporary release beyond the maximum period of sixteen weeks during a calendar year during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases Act, 1897. Admittedly, the petitioner did not apply for parole under the Act *ibid*. Instead, the petitioner and other prisoners were granted parole by the High

⁷ Substituted vide Punjab Act No.15 of 2020 dated 12.10.2020

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Powered Committee to alleviate prison overcrowding during the COVID-19 pandemic. Pertinently, this was not based on any reference to sub-section (2-A) *ibid* much less application of mind by the State Government to the grounds specified therein or on application made by the prisoners. In the absence of any special notification (contemplated in sub-section 2-A of section 3 of the Act) published by the State Government in the official gazette, it cannot be said on mere assumptions that the temporary release of the petitioner during and on account of COVID 19 pandemic was ordered by the respondents in terms of sub-section 2-A *ibid*.

17.2. That aside, it would also be not correct to argue that COVID-19 Special Parole falls under the phrase '*any other sufficient cause*' in Section 3(1)(d). The phrase '*any other sufficient cause*' should be interpreted in harmony with the preceding specified grounds. It cannot encompass grounds that differ from or extend beyond the existing categories. *Ejusdem generis* is a well-established legal principle envisaging that the phrase "*any other sufficient cause*" should be interpreted in conjunction with the preceding grounds or words, that is, it must be understood in a manner consistent with the grounds listed before it. In other words, it should encompass only those reasons that belong to the same category of grounds already mentioned.

17.3. Section 3(3) of the Haryana Act was challenged before the Supreme Court in the *Avtar Singh's* case. The Court distinguished between furlough and parole, noting that Section 3 of the Act serves to address urgent personal problems of prisoners and does not depend on the length of their sentence. In contrast, Section 4 focuses on good conduct during incarceration. The Court upheld these distinctions, deeming them rational and non-discriminatory. Consequently, the Supreme Court's view of Section 3 as intended for addressing the "urgent pressing

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personal problems of a prisoner" reinforces the limited scope of Section 3 and justifies Section 3(3).

17.4. The situation in the present case, aiming to decongest prisons to prevent the spread of COVID-19 and manage the pandemic, does not align with the definition of 'urgent pressing personal problem of a prisoner. 'Notably, no amendments were made to the grounds for parole under Section 3 during this period, and the sole amendment concerned extending the duration of parole without altering the grounds or broadening their scope.

17.5 The High Powered Committee is not a statutory committee under the Act and, strictly speaking, lacks the authority to consider and grant parole under Section 3. The competent authority for this purpose is a different entity. Therefore, the parole granted by the Committee cannot be considered as granted under Section 3 of the Act. Section 3 of the Act outlines a specific procedure for applying, considering, and deciding on parole applications. In this case, this procedure was not followed when granting COVID-19 Special Parole. I am, therefore, unable to accept the contention that the temporary release of the petitioner during and on account of COVID-19 pandemic was ordered by the respondents in terms of any of the other provisions of section 3 of the Act.

17.6 Consequently, the petitioner's parole cannot be classified as granted under Section 3 of the Act. Thus, the restriction imposed by Section 3(3) on not counting the parole period towards the total sentence does not apply to the petitioner, making him eligible to include the period of special parole granted during the pandemic in his actual sentence, in terms of Supreme Court's decisions in '*Sunil Fulchand Shah Vs. Union of India & Ors.*' and '*Avtar Singh Vs. State of Haryana and Anr.*'

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17.7 Therefore, as an upshot, it seems that special COVID parole cannot be considered as granted under Section 3 of the Punjab Act. Resultantly, the restriction outlined in Section 3(3) would not be applicable.

18. Certainly, during the COVID-19 pandemic, correctional facilities worldwide, including those in India, encountered significant challenges in safeguarding the inmates and staff. To curb the virus's spread in prisons, authorities resorted to granting involuntary parole to certain inmates, particularly those at higher risk due to age or underlying health conditions. In the context of releasing inmates on involuntary parole, the objective was to reduce jail overcrowding and protect vulnerable individuals from the virus. However, problems may arise when the calculation of the parole period is not properly factored into an individual's prison sentence.

18.1 Failure to deduct the period of such involuntary (even if not forced) parole during and on account of COVID-19 pandemic from the original sentence could result in individuals serving a longer total prison term than initially mandated by the judiciary. This situation raises constitutional concerns, as it might be viewed as an arbitrary violation of personal liberty, contrary to the principles of fairness and justice enshrined in Article 21 of the Indian Constitution. Article 21's right to personal liberty includes protection from unjust or excessive detention. Hence, individuals released on involuntary parole during the pandemic could face a risk of violation of their constitutional rights if required to return to prison without adjusting their sentences accordingly. To strike a balance between public health needs and constitutional protections, it is vital for concerned executive authorities and policymakers to establish clear guidelines regarding the treatment of parole periods during extraordinary situations such as a pandemic. These guidelines should incorporate appropriate provisions for crediting the time spent

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on parole against an individual's original sentence, thus preventing any potential violation of their fundamental rights under Article 21.

18.2 To illustrate, let's consider a hypothetical scenario: Imagine a person sentenced to two years of imprisonment in 2019. In the following year, 2020, due to the Covid-19 pandemic, this individual is granted involuntary parole for 11 months. After the involuntary parole period ends, he is to surrender back in jail. If the authorities start counting the imprisonment period from the date of surrender, it would result in the individual serving a sentence longer than the original two-year term. Such an outcome would violate Article 21 of the Indian Constitution, which safeguards an individual's choice and fundamental right to life and personal liberty. It is thus crucial to examine the legal framework governing parole and its impact on the total term of imprisonment to ensure compliance with the constitutional protections outlined in Article 21. Failing to credit the involuntary parole duration towards the sentence could potentially lead to an individual enduring incarceration beyond what was originally determined by the judiciary, thereby infringing on their constitutionally protected rights.

19. We need to remember that the main goal of parole is to help prisoners reintegrate into society, beyond just their immediate family. However, the State Government's parole policies during the Covid pandemic didn't succeed in achieving this aim. They led to unnecessary delays in determining eligibility for sentence remission. In situations where a prisoner doesn't request temporary parole with the goal of serving their entire sentence promptly, the exclusion of special involuntary parole in the actual sentence puts the petitioner at a disadvantage. This exclusion effectively prolongs the petitioner's sentence. Moreover, even though the official count for the parole period may have paused, a person's biological clock keeps ticking throughout the period of such involuntary release.

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This can significantly affect an individual's future aspirations they had hoped to pursue after serving their sentence.

20. Mr. Amarinder Singh, learned Amicus Curiae, in course of hearing, produced and drew my attention to an order dated 27.03.2020 issued by the Government of National Capital Territory of Delhi, Home Department, where by keeping in mind the emergent situation of threat of Covid-19 pandemic in Delhi prisons, it was decided to grant upto eight weeks emergency parole, which shall be counted towards the sentence of prisoners. Amicus has drawn my attention an order dated 30.03.2020 issued by the Director General, Prisons and Correctional Services, Madhya Pradesh, Bhopal to the effect that keeping in view the circumstances arising out of the Covid-19 epidemic, for all the prisoners taking the benefit of normal leave already sanctioned on the bail bond and bond submitted for normal leave only, 60 days emergency leave was sanctioned and that the period of the said emergency leave would be counted in the total sentence period of the prisoner.

21. In the case of Punjab also, there is no bar that the COVID-19 Special Parole is not to be counted towards actual sentence of all prisoners. The decision *qua* the same has somehow yet to be taken by the State, while the prisoners languish with the flickering hope, that like their counterparts in other states, they too shall one day be accorded the similar benefit. Living each day in despair and hope, thinking that *"In the stillness of lockdown, each moment on parole contributes to the ultimate goal of sentence completion."*

22. At this stage, reference may also be had to an order dated 28.02.2021 passed by the Supreme Court of India in *Criminal Appeal No(s).1434/2012 Mubinkhan versus the State of Maharashtra*, of which the relevant part is as under:

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“Now, the question before us is that the appellant was granted Emergency Covid Parole Leave on 15.05.2020 and he is on parole leave till date and this period has not been counted while calculating his total period of actual sentence. During the course of hearing, learned counsel for the Crl.A.No.1434/12 3 respondent – State submits that there are about 20,000 prisoners, whose cases are similar to the appellant. In view of the above, we grant liberty to the State to take a policy decision as to whether the Covid Leave period of parole of a convict can be considered for calculating his period of actual sentence or not and whether such a decision is to be applied to all the prisoners or some exceptions are required to be made.”

XXXX

XXXX

23. Taking a cue from the aforesaid order passed by the Hon’ble Supreme Court and in light of the aforesaid other facts and circumstances, I am of the opinion that it would be in the fitness of things to direct the respondents to take a considered decision and pass appropriate orders as to how the period of temporary release of the petitioner and other similarly placed large number of prisoners during and owing to the Covid-19 pandemic is to be treated specifying whether or not the same would count, and if yes, to what extent, towards the total period of their sentence.

24. Accordingly, these writ petitions are disposed of with a direction to the respondents that they shall keep in mind the observations made in the instant judgment and then take a considered decision and pass appropriate orders as to how the period of temporary release of the petitioner and other similarly placed large number of prisoners during and owing to the Covid-19 pandemic is to be treated specifying whether or not the same would count, and if yes, to what extent, towards the total period of their sentence. The needful shall be done by the respondents within two months of the uploading of this order on the website of this Court. Registry to ensure compliance and submit a report.

25. I may also hasten to add here that I am conscious that as far as petitioners are concerned, they have already served the entire sentence during pendency of the proceedings before this court. To that extent relief sought by them is rendered infructuous. However, since the issue raised by them is the one *in rem*

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qua the similarly situated large number of other prisoners, therefore, it was deemed appropriate that petitions be disposed on merits.

26. Pending applications, if any, also stand disposed of.

27. Before parting, the Court records it’s appreciation for Shri Amarinder Singh, Mr. Dheeraj Jain, learned Amicus Curiae and Ms. Simranjeet Kaur, Law Researcher, attached to this court who devoted their considerable time and energy in the extensive and intensive research for providing the relevant inputs and has also rendered valuable assistance for the decision of the case.

(ARUN MONGA)
JUDGE

September 01, 2023
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes