

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223-CRWP-3524-2023

Date of Decision: 02.06.2023

DUSHYANT @ RAMU

... Petitioner

VS.

STATE OF HARYANA & ANR.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RS Dhull, Advocate for the petitioner

Mr. Bijender Dhankar, Addl. AG Haryana

Sandeep Moudgil, J. (Oral)

The petitioner has filed this petition under Articles 226/227 of the Constitution of India read with Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 for issuance of a writ in the nature of certiorari for quashing the speaking order of the Superintendent, Central Jail, Ambala dated 20.03.2023 (Annexure P1) whereby the State has declined to grant regular parole to the petitioner for a period of ten weeks.

Learned counsel of the petitioner has averred that the ground for rejecting the application is that there are numerous cases registered against the petitioner along with history of several jail offences having been raised against him that disentitles him from the leave as sought by the petitioner. It is stated that the petitioner does not come under the category of hardcore prisoner as defined under Section 2(1)(g) of the 2022 Act and as such the petitioner duly fulfills that criteria for availing the parole under Article 21 of the Constitution of India.

It is asserted that the petitioner is the sole bread earner in the family and is required to do agricultural work. His parents are old above 70 years of age and thus incapable of performing agricultural works and thus the petitioner has familial obligations to fulfill. The petitioner has also placed on record report of the Gram Panchayat, Fatehgarh dated 16.03.2023 fortifying the claim of the petitioner.

Notice of motion in this case was issued on 18.04.2023 and pursuant thereto, the respondents have filed their reply/affidavit dated 30.05.2023 stating that in the present FIR, the petitioner has been convicted and sentenced to undergo 10 years RI under Section 395/397 IPC and Section 25 of the Arms Act. The petitioner falls under the category of 'hardcore convicted prisoner' as per Section 2(g)(i)(2), 2(g)(v) of the Parole Act, 2022. The respondents have given details of various FIRs registered against the petitioner totaling more than 21 criminal cases: in some of which he has earned acquittal and in some he stands convicted. The District Magistrate, Jind, in his report dated 03.03.2023 has not recommended the release of the petitioner as he is habitual offender and has 27 cases of loot, dacoity and other heinous offences against him. As such the competent authority i.e. the Divisional Commissioner, Ambala Division, Ambala Cantt has rejected the parole release case of the petitioner vide order dated 20.03.2023.

Learned State counsel has filed custody certificate dated 31.05.2023 which is taken on record. According to the same, the petitioner has undergone 19 years 2 months and 2 days of total custody in the present case.

The petitioner is the sole bread winner of the his family stands established by the report of Gram Panchayat expatiating the qualms of the petitioner that the petitioner is required at his home for performing the said agricultural taks which is old aged parents are incapable of performing. Reliance has been placed on **Jagat Singh vs. State of Haryana and Ors. CRWP No.757 of 2015** to contend that the agricultural operations being time sensitive in nature and requiring physical/manual labour, the prisoner's presence is of paramount necessity. There is nothing on record to suggest that the petitioner had misused the bail earlier granted and moreover, the relaxation is otherwise provided under the Act which makes the petitioner entitled for parole. No material has been referred to suggest that in case the petitioner is released on parole, then he would abscond and commit other crimes.

This Court is of the considered view that the parole cannot be rejected mainly on the apprehension that the petitioner will again commit the same offence. Keeping in view the abovesaid facts and circumstances, moreso, the law laid down by the Apex Court, the impugned order dated 20.03.2023 (Annexure P1) is set aside and the petitioner is released on parole for a period of 10 weeks subject to heavy surety to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate, concerned. The petitioner is directed to surrender on 11.08.2023 at 04:00 PM before the Central Jail, Ambala.

02.06.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No