[225] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-3882-2023
Date of Decision : 31.07.2023

Mohd. Garib …Petitioner

versus

State of UT, Chandigarh and others ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia
Hon'ble Mr. Justice Lalit Batra

Present : Mr. Hoshiar Singh Jaswal, Advocate
for the petitioner.

Mr. Sumit Jain, APP, UT, Chandigarh with
Mr. Dushyant Rana, Advocate.

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B.S. Walia, J. (Oral)

[1] Prayer in the petition is for quashing of impugned order (Annexure P-5) dated 05.04.2023 (wrongly mentioned as Annexure P-4 in the headnote of the petition) rejecting the application of the petitioner for release on parole with a prayer for grant of parole to the petitioner under Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter to be referred as 'the Act') to meet his family members.

[2] Learned Addl. PP, UT, Chandigarh has filed written reply as well as custody certificate. The same are taken on record and copies thereof handed over to learned counsel for the petitioner.

[3] A perusal of the custody certificate reveals that the petitioner has undergone actual custody of 05 years 08 months and 05 days.

[4] Learned counsel contends that the petitioner was sentenced to undergo imprisonment for the remainder of his Natural Life with a fine of

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Rs.5000/- and in default of payment of fine to further undergo simple imprisonment of 06 months awarded by the Court of the learned Addl. Sessions Judge, Chandigarh vide judgment dated 31.08.2018 under Sections 376-D and 506 IPC registered vide FIR No.411 dated 18.11.2017 at Police Station Sector 36,Chandigarh.

[5] Learned counsel further contends that earlier the petitioner had submitted an application for parole for 28 days which was received in the office of the competent authority on 11.06.2022 but the same was rejected vide order (Annexure P-4) dated 15.07.2022 due to the District Magistrate, Ayodhya, UP not recommending grant of parole on the basis of report of the Senior Superintendent of Police, Ayodya, UP on the ground that there was danger to law & order if the convict was released on parole and that he could again indulge in criminal activity besides conduct of the convict was not satisfactory during parole availed by him earlier.

[6] Learned counsel contends that the Inspector General of Prisons, UT, Chandigarh by taking into account that the State Government or any officer authorized by it on this behalf if satisfied that the release of the convict was likely to endanger the security of the State Government or the maintenance of public order and keeping in mind the report of the District Magistrate, Ayodhya, UP as also the provisions of Sections 3 & 4 of the Act *ibid*, rejected the application of the petitioner for release on parole, whereupon, the petitioner invoked the jurisdiction of this Court by way of CRWP No.7331 of 2022, which was decided on 15.11.2022 and impugned order (Annexure P-4) was set aside and the petitioner ordered to be released on parole for 28 days.

[7] Learned counsel contends that thereafter the petitioner applied for 28 days parole on 13.02.2023 but again the District Magistrate, Ayodhya,

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UP sent report vide letter No.968 dated 24.03.2023 not recommending grant of parole to the convict on the basis of report of the Senior Superintendent of Police, Ayodhya, UP on the ground that there was danger to law & order if the convict was released on parole and the convict could again indulge in criminal activity if released on parole whereupon the Inspector General of Prisons, UT, Chandigarh in the light of Sections 3 & 4 of the Act, and keeping in mind the report of the District Magistrate, Ayodhya, UP, rejected the claim of the petitioner for release on parole.

[8] Learned counsel contends that even earlier the petitioner had been released on parole vide order dated 03.03.2022 in CRWP No.1072 of 2022 by setting aside order dated 24.01.2022 to enable him to meet his family members by observing that impugned order dated 24.01.2022 had been passed by the Inspector General of Prisons, UT, Chandigarh though based upon the recommendations of the District Magistrate, Ayodhya, UP, but the conclusion and the observations therein were based on no evidence.

[9] Learned counsel contends that apart from the two instances, as referred to above when the petitioner had availed parole, the claim of the petitioner for release on 28 days parole in terms of application dated 11.06.2022 was also rejected vide Annexure P-4 again which was set aside vide order dated 15.11.2022 in CRWP No.7331 of 2022 by recording that there was no specific information with regard to misconduct by the convict as was expressed as an apprehension by the District Magistrate in his communication.

[10] Learned counsel contends that in fact, it is the *modus operandi* of the authorities to reject the claim of the petitioner for release on parole by citing apprehension of breach of peace/danger to security of the State maintenance of public order/conduct of the petitioner during his previous

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release on parole not being satisfactory without there being any material whatsoever to substantiate the said conclusion, thereby delaying the release of the petitioner, putting him to harassment and resulting in his incurring expenditure besides wastage of Court time and that in the circumstances, the petitioner is entitled to relief prayed for besides award of exemplary costs.

[11] Learned Addl. PP, UT, Chandigarh has not been able to controvert the plea of the learned counsel but assures that in future, not only the application of the petitioner for release on parole but also applications of all convicts for release on parole would be considered and decided in a time bound manner strictly in accordance with the provisions of the Act and the law applicable and in case any claim is to be rejected, the same would be by giving specific reason.

[12] We accept the assurance of the learned Addl. PP, UT, Chandigarh and proceed no further in the matter.

[13] Accordingly, in the light of the position noted above, we are of the view that UT, Chandigarh has not been able to show from the material on record any instance on the basis of which it can be inferred that the release of the petitioner would endanger the security of the State /maintenance of public order or that his conduct during his previous release on parole was not satisfactory as also in view of the petitioner on earlier three occasions having been released on parole and surrendered on time and no instance as such having been pointed out of his conduct during said period of parole not being satisfactory.

[14] Accordingly, the writ petition is allowed. Impugned order dated 05.04.2023,(Annexure P-5) is set aside. The petitioner is directed to be released on parole for 04 weeks as per the provisions of Section 3 (1)(d) of the Act, subject to his furnishing bonds/surety to the satisfaction of the

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District Magistrate/Competent Authority, Ayodhya, UP. Immediately on release on parole, the petitioner shall proceed to village Pithla, where he would stay during the period of parole and on reaching said place, the petitioner will inform the SHO of the concerned Police Station having jurisdiction over the area of his address i.e. Police Station Kumar Ganj, District Ayodhya (UP) his mobile phone number besides share his live location as and when asked for. The SHO of the area would at liberty to call the petitioner on his mobile phone number to confirm his location. The petitioner shall also report to the local Police Station every week and shall surrender before the jail authority on the expiry of the parole period.

(B.S. Walia)
Judge

(Lalit Batra)
Judge

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'Rajneesh'

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

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