

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-5366-2022

Date of Decision: 20.03.2023

MAHENDER

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Ms. Gauri, Advocate for
Mr. Ajay Kripal Singh, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana
with
Mr. Saurabh Mago, Assistant Advocate General, Haryana.

LISA GILL, J.(Oral)

Prayer in this petition is for setting aside order dated 19.04.2022, passed by respondent no.3-Commissioner, Ambala Range, whereby petitioner's request for furlough for three weeks has been rejected.

It is observed in the impugned order dated 19.04.2022 that on the basis of report by Superintendent of Police, Sonapat, District Collector, Sonapat has opined that there is possibility of danger to the security of the State or public order due to the release of petitioner as on such release on furlough, petitioner may influence and pressurize witnesses by violating the rules of release, may abscond and commit any cognizable offence. Apart therefrom, it is observed that registration of three other cases against petitioner imply

that he is a habitual offender, therefore, application for furlough of three weeks was rejected.

Learned counsel for the petitioner argues that petitioner has availed parole on numerous occasions (five times) earlier and has never misused this concession. Petitioner, who it is stated has been continuously in jail for more than four years, had filed the application for furlough before respondent no.5, who found him eligible for the concession as reflected in communication dated 22.11.2021 to respondent no.4. It is further contended that in so far as FIR No.11 dated 15.01.2006 under Sections 286/506 IPC and Sections 25/54/59 of Arms Act, 1959 and FIR No. 227 dated 18.10.2006 under Sections 148/149/506/323/285 IPC and Sections 25/54/59 of Arms Act, 1959 are concerned, petitioner stands acquitted of the charges framed against him and petitioner's appeal challenging his conviction in the third FIR is pending. It is thus prayed that this petition be allowed.

Heard learned counsel for the parties.

Perusal of reply dated 20.11.2022, on behalf of respondents no.1 to 5 reflects that petitioner had availed parole on five different occasions earlier and he had surrendered at the stipulated time. Details thereof are specifically mentioned in the said reply. It is further stated therein that petitioner having undergone 04 years, 07 months and 25 days of actual imprisonment, is eligible for consideration of his case for grant of furlough in terms of Section 4 of the Haryana Good Conduct Prisoners (temporary release) Act, 1988. Doubtlessly, it is mentioned in the impugned order, rejecting furlough, that there is apprehension/possibility of danger to security

of State or public order due to release of petitioner but admittedly reason mentioned therein is that in case petitioner is released on furlough, he may pressurize witnesses or may abscond or commit any cognizable offence. In so far as the question of pressurizing of witnesses is concerned, it is affirmed and verified that no matter is pending trial. It has been held in a plethora of cases that temporary release of a prisoner on parole or furlough can be denied only if the release is likely to endanger security of State or maintenance of public order. For arriving at such satisfaction that danger to security of State or maintenance of public order is indeed present, there has to be sufficient material before the District Magistrate for consideration. In the present case, it appears that the said phrase i.e. 'endangering security of State or disruption of public order' finds mention in the impugned order merely on the basis of general allegations that petitioner may violate rules of release, may abscond, pressurize witnesses or commit any cognizable offence. Fact that petitioner had earlier availed the benefit of parole and never misused the said concession, has not even been considered. Nothing is forthcoming to show that during the period of abovesaid parole granted to him, petitioner had indulged in any of the activities, endangering security of the State or leading to disruption of public order.

Having heard learned counsel for the parties, in our considered opinion, present case calls for reconsideration of the matter by the competent authority in accordance with law and parameters as laid down for grant of furlough.

Accordingly, order dated 19.04.2022 (Annexure P-2) is set aside with a direction to the competent authority to reconsider the matter and decide the same expeditiously and preferably within a period of four weeks from receipt of certified copy of this Order, by passing a speaking order, in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

20.03.2023
Sunil

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