

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRWP-8025-2021 (O&M)
Date Reserved: 17.03.2023
Date of Pronouncement: 11.04.2023

Azad SinghPetitioner

Versus

The State of Punjab & OthersRespondents

2. CRWP-11443-2022(O&M)

Azad SinghPetitioner

Versus

The State of Punjab & OthersRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Ms.Bandana Trikha, Advocate, for the petitioner.

Mr.Tarun Aggarwal, Sr. DAG, Punjab.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Dheeraj Jain, Senior Counsel, for respondent No.4.

HARKESH MANUJA, J.

This order of mine shall dispose of two criminal writ petitions filed under Article 226 of Constitution of India for issuance of directions to Superintendent Central Jail, Patiala to allow parole to the petitioner. While CRWP 11443 of 2022 has been filed by the petitioner to give power of attorney to his uncle to sell off his land and to be present in person as per requirement by the bank for premature closure of the FDR, previous CRWP 8025 of 2021 was filed for medical emergency in relation to the ill health of his father, petitioner being the single child to take care of his health.

For convenience, the facts are taken from CRWP 11443 of 2022 i.e. the recent writ petition filed on behalf of the petitioner.

Very briefly the facts of this case are that petitioner went to Birmingham and murdered his wife after finding her sleeping in the bed with another person. After the trial, he was sentenced for murdering his wife without pre-mediation by Crown Court Wolverhampton, UK on 26-7-2017, for life imprisonment terming to 14 years. Subsequently, he was transferred to India under the Prison Transfer Agreement between India & UK to undergo the balance sentence. Petitioner submitted an application along with the papers for grant of parole for 2 weeks to the Superintendent, Central Jail, Patiala, which was not entertained saying that the State had no power and the petitioner should approach this Court to get parole.

Learned Counsel for the petitioner contends that repatriated prisoner Azad Singh should also be given the benefits of parole according to The Punjab Good Conduct Temporary Release Act 1962, as State Governments are the receiving States through Central authorities. He submits that petitioner's father suffers from various ailments and is confined to bed and for the purpose of making arrangements for medical expenses, petitioner wants to give power of attorney to his uncle (Chacha) Bhupinder Singh for the sale of land and premature closure of his FD for which he has to be present in person before the bank and therefore, emergency parole/regular parole be granted to him. He further submits that petitioner has earlier also availed emergency medical parole three times from this Court and always surrendered in time.

On the other hand learned counsel for the Union of India/ respondent No 4 contends that in petitioner's case, minimum term has been set at 14 years by the United Kingdom Court which is to expire in 2031. He further contends that United Kingdom authorities have informed through Government of India that life sentence prisoners in England and Wales are usually not eligible for temporary release from prison (parole/ furlough in Indian context) until they move to open prison conditions, which happens approximately 2 years prior to the 'minimum term' expiry date. He also relies upon a judgment of this Court dated 14.12.2021 in Criminal Writ Petition No.664 of 2021 titled as **“Harpreet Singh vs State of Punjab & others”** to contend that parole cases are to be governed by the terms & conditions of the Indo-UK Agreement and the rules of State Governments would not apply.

Arguments addressed by learned Counsel for respondent number 1 to 3 are in line with the arguments of Union of India / respondent No 4 , with only additional submission that since agreement on transfer of sentenced person is entered into at the level of Union Government with a foreign country, appropriate authority in such cases would be the Union Government and the State authorities are merely the custodian of such convict, he being located/placed in a jail within their territorial jurisdiction.

I have heard learned counsel for the parties and perused the paper-book as well the law cited at the Bar. Before delving deep into this matter, it would be appropriate to take a brief look at the legal postulates applicable in this case.

Repatriation of Prisoners Act, 2003 (for short, 2003 Act) provides for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India. Out of Various international conventions governing the repatriation of prisoners, primary is “The International Covenant on Civil and Political Rights, 1966” which is a multilateral treaty adopted by the United Nations General Assembly and Article 10 of the same states that individuals deprived of personal liberty shall be treated with humanity and dignity. Accordingly, basic theme behind 2003 Act is the cultural differences and distance from family in unfamiliar circumstances will aggravate the impact of sentence that has been awarded to an individual and therefore a prisoner who is a citizen of another country shall be returned back for the purpose of social rehabilitation of sentenced persons into their own countries;.

On the same lines, The primary purpose behind Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, 1962 Act) for granting Parole (or temporary release as recognized in the State of Punjab) is to release the prisoner to meet the exigencies of a specific circumstance and for re-establishing social ties so that subsequent assimilation of the convict in society post sentence, is relatively easier.

A high level purview of both these laws represents the recognition by the lawmakers that even convicted prisoners have right to life and both of these laws positively extend the scope of this right into a prisoner’s life. Therefore while giving effect to these laws in a particular case, it becomes necessary to keep in mind the overall intent and purpose behind these laws. Even a coordinate bench of this Court in

CRWP-5315-2020 titled as "**Jaswinder Singh Dosanjh vs State Of Punjab And Others**" decided on 02.09.2020, in similar facts and circumstances with similar contentions by the respondent No 4 granted the parole.

With respect to judgment by another coordinate bench, cited by counsel for respondent No 4, while there cannot be any doubt with the finding of coordinate bench in Harpreet Singh's case (supra) that terms of sentence of a repatriated prisoner will be subject to the terms of contracting countries, however, I am unable to find myself in conformity with the other finding that concession of parole should not be extended to prisoners until they move to open prison conditions, which happens approximately 2 years prior to the minimum term as provided in UK law.

It is settled law that if there is a conflict between the provisions of a municipal/domestic law and International law, former will prevail. For this purpose, reliance can be placed on "**Jolly George Vergese v. Bank of Cochin, reported as 1980 SCR (2) 913**", in which Hon'ble Apex Court observed as below:

"Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in "Human Rights-in National and International Law" rightly points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law. From the national point of view the national rules alone count. With regard to interpretation, however, it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations."

Further, Hon'ble Apex Court in **"State of West Bengal v. Kesoram Industries reported as [2004] 1 SCR 564"** observed that a treaty entered into by India cannot become law of the land and it cannot be implemented unless Parliament passes a law as required under Article 253.

It would also be apposite to quote the relevant observation of Hon'ble Apex Court in **"Bhavesh Jayanti Lakhani vs State of Maharashtra & Ors. reported as 2009(9) SCC 551"**, which are as below:

"India follows the doctrine of dualism and not monoism. We may, however, hasten to add that this Court, however, at times for the purpose of interpretation of statute has taken into consideration not only the treaties in which India is a party but also declarations, covenants and resolutions passed in different International Conferences.

The Act as also the treaties entered into by and between India and foreign countries are admittedly subject to our municipal law. Enforcement of a treaty is in the hands of the Executive. But such enforcement must conform to the domestic law of the country. Whenever, it is well known, a conflict arises between a treaty and the domestic law or a municipal law, the latter shall prevail."

In view of the aforementioned judgements, it is apparent that in case of a conflict between an international treaty and domestic law, it is domestic law which would prevail. Present case is even different, because if the argument by the learned Counsel for respondent No 4 is accepted, then by way of this treaty / agreement, law of UK regarding parole is being made applicable in India, when terms of agreement are

silent on this aspect, which is completely inconceivable. Highest priority would have to be accorded to the domestic law, if the same is silent on any subject, then terms of agreement / treaty would come into picture and only if neither domestic law nor terms of bilateral treaty provide any guidance on a subject, reliance can be placed on relevant law of another country to give them a meaningful interpretation. Unfortunately, this aspect empowered by the authorities of Hon'ble Apex Courts, including the judgment of this Court in **Jaswinder's** case (supra) were not brought in the knowledge of this Court while deciding the matter in Harpreet Singh's case.

In the presence of provisions of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and Repatriation of Prisoners Act, 2003, conjoint with silence of bilateral treaty on the aspect of parole (temporary release), this court is duty bound to implement the mandate of relevant provisions of these laws. When there is specific provision in Section 3 of 1962 Act governing the grant for parole/ temporary release, submission by the learned Counsel for respondent No 4 that petitioner cannot be granted parole in view of UK law is devoid of any merit and is liable to be discarded. A perusal of reply by respondent No 4 shows that even UK authorities does not stipulate a complete bar on parole and in exceptional or compelling compassionate circumstances, parole for relatively shorter periods can be granted.

Above all, the stance of respondent No 4 has been quite opposite before Delhi High court in W.P.(CRL) 1070/2020 titled as **"Sukhvinder Kaur vs State (Govt. Of Nct Of Delhi) & Ors"** decided on 14.10.2020 and relevant para is being produced hereunder:-

“5. Since the petitioner had been convicted by a court in Sri Lanka, and had been repatriated to India to serve sentence under the provisions of the Repatriation of Prisoners Act 2003, a preliminary question arose in the present proceedings as to whether the prison rules applicable to prisoners in Delhi would also apply to the petitioner. On this point, Ms. Suman Chauhan, learned counsel for respondent No.2/Ministry of Home Affairs, Government of India had drawn attention to communication dated 04.08.2020, whereby the Ministry had clarified that prisoners serving sentence in India after repatriation under the Repatriation of Prisoners Act 2003 would be governed by the prison rules of the receiving State, which in this case was Delhi, India; and accordingly the Ministry had confirmed that the petitioner would be governed by the Delhi Prison Rules 2018 and other orders issued by the Government of NCT of Delhi.”

Though, this communication was brought to the knowledge of the Hon'ble Court in Harpreet Singh's case, however, it was not taken into consideration by observing that it was in reference to Transfer of Sentenced Persons (TSP) agreement between India and Sri Lanka and its terms cannot be made applicable to persons transferred between UK and India. In this context, it needs to be taken into consideration that these agreements are standard agreements having almost identical clauses and Article 7 relied upon as the basis of instruction dated 04.08.2020 is also present in identical terms in Indo-UK agreement as well. In addition to that it will be also violative of Article 14 of Constitution of India if persons repatriated from Sri Lanka or other countries are granted parole but persons repatriated from UK, having same terms of clause, are not given any such relaxation.

Additionally, there are other reasons as well for holding so:

- When agreement is silent with respect to parole, instructions received from the UK authorities cannot be considered at par with codified law and cannot supersede the benevolent provisions of 1962 Act. Merely because some individual in past has abused the period of parole granted to him, shall not come in the way of a human right of other similar persons including petitioner. Even instruction dated 21.08.2020 by UK authorities, which were issued after this incident, a convict may be temporarily released after imposing appropriate conditions.
- Article 7 of the Indo-UK agreement stipulates that subject to the provisions of article 10 of this agreement, enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions. When article 10 of the agreement is silent with respect to grant of parole, law applicable in the receiving state i.e. India would become applicable. Prison management and administration, as a legislative subject, falls under Entry 4 of the State List i.e. List II of Schedule VII to the Indian Constitution, accordingly, it is in the domain of the State Legislature and laws prevalent in State of Punjab which would be applicable.
- The only restriction stipulated in Article 7 is that receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. By granting parole, legal nature and duration of the sentence is not being

interfered with in any way as period of parole is not liable to be deducted from the duration of sentence. Rather, Article 7 further stipulates that if the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. If receiving state i.e. India in furtherance of right to liberty as enshrined under Article 21 of Constitution of India has provision for parole, then it's benefit must be granted to a prisoner, if otherwise there is no hindrance or legal impediment in doing so.

- The above mentioned stipulation in Article 7 is also present in identical terms in section 13(6) of 2003 Act, therefore to content that benevolent provisions of Indian law cannot be made applicable does not have any substance.
- In that context, it is also necessary to mention here that fundamental rights are not granted by the State rather they are inherent in a human and only recognised by the state. State is merely entitled to regulate them but in no way, it can create an absolute bar on these rights.

Petitioner's case is also supported from the fact that in past he has been granted parole on 3 occasions and on all the occasions he surrendered in time in the jail and also during his period of parole as well; there has been no adverse report against him. Documents brought on record by the petitioner apparently show that his physical presence

is required for the purpose as mentioned in the petition. It would also be violative of Article 300A, if petitioner is not able to put property to his use at the time of his need save by authority of law. Report regarding ill health of his father stand submitted vide reply dated 08.09.2021 filed by respondent No 1 in CRWP-8025-2021.

Keeping in view the peculiar facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on emergency parole for a period of 2 weeks subject to his furnishing requisite bonds to the satisfaction of the competent authorities/District Magistrate. The petitioner shall surrender before the authorities concern on the completion of the said period.

Disposed off in the above terms.

As petitioner has been granted the parole for 2 weeks for the purpose of executing documents as well as for making arrangements regarding taking care of his father, CRWP-8025-2021 has thus been rendered infructuous and disposed off accordingly.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

April 11, 2023
anil

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>