

CRWP-7754 of 2022 (O&M)

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

CRWP-7754 of 2022 (O&M)
Reserved on: 11.01.2023
Date of Pronouncement: 24.01.2023

Praveen

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. Bandana Trikha Sachdev, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

NAMIT KUMAR, J.

The petitioner has approached this Court under Article 226 of the Constitution of India seeking quashing of order dated 19.07 2022 (Annexure P-1) passed by the Divisional Commissioner Karnal, whereby his application seeking 10 weeks' regular parole has been rejected on the basis of recommendations of the District Magistrate, Narnaul. Further directions have been sought by the petitioner to release him from jail temporarily to meet his family members especially his old-aged parents who are not keeping well and to make for them other necessary arrangements.

The brief facts leading to the filing of the present case are that the petitioner was arrested in case FIR No. 415 dated 07-11- 2012 u/s 148 /149 302 /120-B IPC and 25 Arms Act registered at Police Station

CRWP-7754 of 2022 (O&M)

Mahendragarh, District Mahendragarh and was convicted and sentenced to RI for life and to pay fine of Rs. 10,000/- (ten thousand) and in default of payment of fine to undergo further RI for three years u/s 302/149/120-B IPC and RI for life and to pay fine of Rs. 10,000/- (ten thousand) and in default of payment of fine to undergo further RI for three years u/s 120-B IPCRI for two years u/s 148 IPC and U/s 25 of Arms Act, 1959 to undergo further RI for three years by the Ld. Addl. Sessions Judge, Narnaul, vide order dated 04.11.2015. Being aggrieved, petitioner preferred appeal bearing number CRA-1706-DB-2015 that was dismissed by this Court vide judgment dated 23/08/2018.

It has further been averred that the Panchayat has recommended the release of the petitioner on regular parole to look after his parents who are old and are not keeping well. Besides the petitioner, there is no other able person in the family to take care of them and to do other necessary household works and the petitioner has already availed parole earlier without any offence or breach of peace.

On issuance of notice of motion to the respondents, reply by way of affidavit of Amit Kumar Superintendent of Jail, District Jail, Narnaul, has been filed on behalf of respondents No.1 to 3 wherein it has been stated that as per jail record, petitioner was convicted on 04.11.2015 by the Court of learned Additional Sessions Judge, Narnaul, in case FIR No.415 dated 07.11.2022 under Sections 148, 149, 302, 216, 201, 120-B IPC and Section 25/54/59 of the Arms Act registered at Police Station Mahendragarh and the petitioner was sentenced as under:

CRWP-7754 of 2022 (O&M)

Under Section	Sentence (RI)	Fine (in Rs.)	In default of fine
120-B IPC	Rigorous imprisonment for life imprisonment	Rs.10,000/-	Rigorous imprisonment for a, further period three years.
148 IPC	Rigorous imprisonment for two years	-	
302/120-B/149 IPC	Rigorous imprisonment for life imprisonment	Rs.10,000/-	Rigorous imprisonment for a, further period three years.
201 IPC	Rigorous imprisonment for five years	Rs.5,000/-	Rigorous imprisonment for a, further period one year.
216 IPC	Rigorous imprisonment for five years	Rs.5,000/-	Rigorous imprisonment for a, further period one year.
25/54/59 of the Arms Act	Rigorous imprisonment for three years	-	-

It has further been submitted that the petitioner/convict was admitted in District Jail, Karnal on 15-04-2022 on being transferred from District Jail, Bhiwani in compliance of orders of Director General of Prison, Haryana, Panchkula vide their letter No. 15329-30 D.G./Jails/2022. The petitioner is presently confined in District Jail, Karnal. It is further submitted that the petitioner/convict has undergone imprisonment **08 Years, 04 Months & 14 days** including under-trial period 02 years, 11 months & 10 days and deducted parole period as on 29-11-2022.It has further averred in the reply that the petitioner is involved in various other cases, details of which are as under: -

CRWP-7754 of 2022 (O&M)

(i) The petitioner is facing trial in case FIR no. 36 dated 24-01-2012 U/s 148, 149, 452, 323, 325, 506 IPC P.S. City Mahendergarh before the Court of Sh. Munish Nagar, Ld. Sub-Divisional Judicial Magistrate, Mahendergarh on 21-12-2022. The petitioner is on bail in this case as per order dated 16-11-2022 of the Ld. Court of Sub-Divisional Judicial Magistrate, Mahendergarh.

(ii) The petitioner is facing trial in case FIR No. 369 dated 26-08-2021 U/s 147, 149, 323, 447, 506 IPC & 25/54/59 Arms Act, P.S. City Mahendergarh before the Court of Sh. Munish Nagar, Ld. Sub-Divisional Judicial Magistrate, Mahendergarh on 22-12-2022. The petitioner is on bail in this case as per order No. 55 dated 11-03-2022 of the Ld. Court of Sub-Divisional Judicial Magistrate, Mahendergarh.

(iii) The petitioner is complainant in case COM/165/2016, HRNRA1-001320-2016 Praveen Vs. Tamanna, in case no. 107 dated 14-12-2016 U/s 323, 324, 506, 34 IPC Police Station Mahendergarh. The case is pending before the Court of Sh. Munish Nagar, Ld. Sub- Divisional Judicial Magistrate, Mahendergarh on 22-12-2012 for proceeding.

That, the details of others decided/acquitted case in respect of the petitioner are as under:-

i) Acquitted on 04-06-2014 by the Ld. Court of Sessions Judge, Narnaul in case FIR no. 390 dated 22-10-2012 U/s 307, 34 IPC, Police Station City Mahendergarh.

CRWP-7754 of 2022 (O&M)

ii) Acquitted on 26-08-2016 by the Ld. Court of Sub Divisional Judicial Magistrate, Mahendergarh in case FIR no. 129 dated 02-04-2012 Us 322, 325, 506 IPC, Police Station Mahendergarh.

iii) Acquitted on 21-12-2016 by the Ld. Court of Sub Divisional Judicial Magistrate, Kanina, in case FIR no. 48 dated 28-02-2012 U/s 148, 149, 323, 325, 427, 379 IPC, Police Station Sadar Kanina, Mahendergarh.

iv) Acquitted on 27-02-2017 by the Ld. Court of Judicial Magistrate 1st Class Mahendergarh in case FIR no. 173 dated 12-05-2012 U/s 148, 149, 323, 506 IPC & 25/54/59 Arms Act. Police Station Mahendergarh.

v) Acquitted on 24-07-2017 by the Ld Court of Judicial Magistrate 1st Class Mahendergarh in case FIR no. 371 dated 06-10-2010 U/s 148, 149, 323, 325 1PC & 25 of Arms Act, Police Station Mahendergarh.

vi) Acquitted on 20-02-2018 by the Ld. of Additional Chief Judicial Magistrate. Rewari in case FIR no. 34 of 2012 U/s 148, 149, 323, 341, 427, 506 IPC, Police Station Khol, Rewari.

vii) Court Complaint case nil/2015 U/s 138 NI Act, petitioner has been acquitted on 20-01-2014 by the Court of Sh. Jitender Singh, Ld. Judicial Magistrate Ist Class, Rewari, Haryana.

CRWP-7754 of 2022 (O&M)

It has further been averred in the reply that the petitioner was released 21.05.2021 on special parole till 31.08.2021 in compliance of the order dated 23.03.2020 passed by the Hon'ble Supreme Court in CWP No.1 of 2020 as conveyed through Executive Magistrate-cum-Tehsildar, Mahendergarh vide release order No.60/PA dated 21.05.2021 and directed to report back to the prison on 01.09.2021, but special parole period of the petitioner/convict was further extended upto 18.09.2021 and the petitioner/convict surrendered on 19.09.2021 after availing special parole period. It has further been submitted that FIR No.369 dated 26.08.2021 under Section 147, 149, 323, 447, 506 IPC and Section 25/54/59 of the Arms Act was registered at Police Station City Mahendergarh against the petitioner during the period when he was on special parole from 21.5.2021 to 18.09.2021 and the petitioner is facing trial before the Court of learned SDJM, Mahendergarh and is on bail in this case in terms of order dated 11.03.2022 of the Court of learned SDJM, Mahendergarh. It has further been averred that 10 weeks' regular parole case of the petitioner was initiated by the Superintendent, District Jail, Karnal, on 20.05.2022 on the request sent by the petitioner dated 18.05.2022 and the same was forwarded to the District Magistrate, Mahendergarh, at Narnaul with a copy to the Commissioner, Karnal Division, Karnal, for recommendation/sanction vide District Jail, Karnal, office letter No. 6966-69 dated 20.05.2022. The District Magistrate, Mahendergarh at Karnal conducted inquiry through Superintendent of Police, Mahendergarh and it has been stated by the Superintendent of Police,

CRWP-7754 of 2022 (O&M)

Mahendergarh that case FIR no.369 dated 26.08.2021 under Sections 147, 149, 323, 447, 506 IPC and Section 25/54/59 of the Arms Act was registered against the petitioner at Police Station Mahendergarh during parole period and he being an habitual offender, there is apprehension of any kind of untoward incident hence case of regular parole was not recommended and agreeing with the report of Superintendent of Police, Mahendergarh, the temporary release of the petitioner on parole has not been recommended by District Magistrate, Mahendergarh at Narnaul vide their endorsement No.151/PA dated 04.07.2022. It has further been averred that the temporary release on parole case of the convict/petitioner has not been recommended by competent authority i.e. Commissioner, Karnal Division, Karnal after considering the report of Superintendent of Police, Mahendergarh and District Magistrate, Mahendergarh at Narnaul. Therefore, in view of the above mentioned the application of release of convict Praveen son of Sahi Ram on parole has been rejected by Competent authority i.e. Commissioner. Karnal Division, Karnal in view of public interest as per Section 6 (1) of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2012 vide their Endst No Parole/1272-73 dated 19-07-2022.

Learned counsel for the petitioner contended that the impugned order dated 19.07.2022 (Annexure P-1) is against the provisions of Section 11(3) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (hereinafter referred to as 'the Act'), which provides that if the convicted prisoner is awarded major punishment for any jail offence or has violated the condition of

CRWP-7754 of 2022 (O&M)

temporary release, he shall not be eligible for any kind of parole for one year from the date of such offence and whereas in the present case FIR No.369 under Sections 147, 149, 323, 447, 506 IPC and Section 25/54/59 of the Arms Act was registered on 26.08.2021 and whereas the period of one year has already elapsed and therefore, the petitioner is entitled for grant of release on regular parole for ten weeks.

Per contra, learned State counsel contended that since during the parole period, FIR No.369 was registered on 26.08.2021, therefore, his application for grant of regular parole for ten weeks was rightly rejected vide order dated 19.07.2022 (Annexure P-1) and, therefore, petitioner is not entitled for release on parole.

I have heard learned counsel for the parties and perused the record.

Before proceeding further, it is apt to give reference to the relevant provisions of the Act governing the grant of regular parole, under which the case of the petitioner is governed. Section 2 provides the definitions of various terms used in the Act. Section 2(1) (i) (iii) provides that 'regular parole' means parole granted to a convicted prisoner by the competent authority under Section 3. Section 3 provides that the competent authority shall grant regular parole to a convicted prisoner subject to such conditions and procedure as specified under Sections 11 and 12. Section 11 provides that a convicted prisoner shall be entitled for consideration for a regular parole or furlough or emergency parole or custody parole under this Act only, if he is on bail in all the cases which are pending against him

CRWP-7754 of 2022 (O&M)

before any Court or competent authority. Section 11(3) provides that any convicted prisoner who has been awarded minor punishment for any jail offence shall not be entitled for any kind of parole for six months from the date of such offence and a convicted prisoner who has been awarded a major punishment for any jail offence or has violated the conditions of temporary release, shall not be eligible for any kind of parole for one year from the date of such offence. Section 12 gives procedure for parole or furlough.

Relevant provisions of the Act read as under: -

1. (1) This Act may be called the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022.

$$x \qquad x \qquad x \qquad x$$

2. (1) In this Act, unless the context otherwise requires,-

(i) “parole” means temporary release of a convicted prisoner from custody and is categorized as under:-

$$x \qquad x \qquad x \qquad x$$

(iii) ‘regular parole’ means parole granted to a convicted prisoner by the competent authority under section 3;

$$x \qquad x \qquad x \qquad x$$

3. (1) The competent authority shall grant regular parole to a convicted prisoner subject to such conditions and procedure as specified under sections 11 and 12.

(2) The period for which a convicted prisoner may be released under this section shall be ten weeks in a calendar year cumulatively and the convicted prisoner may avail it in two parts:

$$x \qquad x \qquad x \qquad x$$

11. (1) A convicted prisoner shall be entitled for consideration for a regular parole or furlough or

CRWP-7754 of 2022 (O&M)

emergency parole or custody parole under this Act only, if he is on bail in all the cases which are pending against him before any Court or competent authority.

x

x

x

*(3) Any convicted prisoner who has been awarded a minor punishment for any jail offence, shall not be eligible for any kind of parole for six months from the date of such offence; **and a convicted prisoner who has been awarded a major punishment for any jail offence or has violated the conditions of temporary release, he shall not be eligible for any kind of parole for one year from the date of such offence:***

Provided that such convicted prisoner may be sent on custody parole to attend funeral of his family members.”

Petitioner was granted special parole from 21.05.2021 to 18.09.2021 and his case for ten weeks regular parole was initiated by the Superintendent, District Jail, Karnal on 20.05.2022 on the request sent by the petitioner dated 18.05.2022 and the same was forwarded to the District Magistrate at Narnaul. The District Magistrate, Mahendergarh at Narnaul conducted inquiry through Superintendent of Police, Mahendergarh, wherein it was stated that a case FIR No.369 dated 26.08.2021 under Sections 147, 149, 323, 447, 506 IPC and Section 25/54/59 of the Arms Act was registered against the petitioner at Police Station City Mahendergarh during parole period.

Since the offence during parole period was committed by the petitioner on 26.08.2021 when FIR No.369 was registered, therefore, petitioner was not eligible for grant of any kind of parole for

CRWP-7754 of 2022 (O&M)

a period of one year from the date of the offence in view of the provisions of Section 11(3) of the Act upto 25.08.2022, therefore, there is no irregularity or illegality in the impugned order dated 19.07.2022.

In view of the above, present petition being devoid of any merit is dismissed.

Needless to mention here that if any application is moved by the petitioner for grant of parole, since he has already completed one year from the date of commission of offence, this Court is sanguine that an appropriate order shall be passed thereon by the competent authority in accordance with law.

24.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No