

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

CRWP-7228-2023 (O&M)

Date of decision : 01.09.2023

BALDEV SINGH

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. L.K. Narang, Advocate and Mr. Kushager Goyal, Advocate
for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Prayer is for grant of interim release of the petitioner on parole
the medical ground as he is required to undergo treatment for right hip joint.

2. Petitioner is stated to be a hardcore prisoner by the respondent-
State and his criminal antecedents have been spelled out as under:

“the petitioner/ convict Baldev Singh S/o Shri Gajjan Singh, aged 65 years R/o Village Jandwala Jattan, Tehsil Dabwali, District Sirsa, Haryana was acquired by the then Ld. Court of District & Sessions Judge, Sirsa on dated 22.04.1994. That, thereafter the State of Haryana has filed a CrL Appeal No. 39 DBA of 1995 before the Hon'ble Punjab & Haryana High Court Chandigarh, the Hon'ble Court reversed the judgment of acquittal passed by the Ld. Court of Session Judge Sirsa and convicted the petitioner/convict for the commission of offences punishable under Section 15 of NDPS Act vide Order dated 29.05.2003 in case FIR No. 234 Dated 17-09-1990 U/S 15 of NDPS Act, P.S3 Sadar Dabwali, District Sirsa has been sentenced as under :

Offence/U/s.	Imprisonment	Fine	In default of fine imprisonment
15 of NDPS Act	Rigorous imprisonment for a period of 12 (twelve) years	Rs.1,50,000/-	Rigorous imprisonment for a period of Six months. (Fine has not been paid.)

4. That, the details of criminal case/others convicted case in respect of the petitioner are as under :-

(i) Convicted on 28.10.2003 in case FIR No. 130 dated 14-12-2019 U/s 8/9 HGCP Act 1988, Police Station Odhan, District Sirsa and sentenced to undergo simple imprisonment for 02 years and fine of Rs. 500/- **(Fine Paid)**. In case of default of payment of fine the convict shall further undergo imprisonment for 07 days (On bail in this case).

5. That, the details of acquittal cases of the petitioner are as under :-

- (i) FIR No. 45 dated 02-09-1993, U/S 18 NDPS Act P.S. Cant Firojpur Punjab. Convicted by the then Ld.Court of Special Judge, Firojpur (Punjab) on 10-02-2006 for 10 years rigorous imprisonment and to pay of fine of Rs. 1,00,000/- in default of fine 01 years rigorous imprisonment. **(acquitted by the Hon'ble High Court Chandigarh on 23-03-2006 in CRA- 466-SB of 2006)**
- (ii) FIR No. 41 dated 15/05/1996 U/s 18/61/85 NDPS Act. P.S. Sangat, District Bathinda. (Punjab) **(Acquitted on 20-01-2006 by the then Ld. Court District & Sessions Judge Bathinda.)**

6. That, the details of cases undergone by the above said convict are as under:-

- (i) FIR No. 302 dated 16-12-1994, U/S 148, 149, 307, 323 IPC & Arms Act. P.S. Kalanwali, District Sirsa. Convicted by the then Additional District & Sessions Judge Sirs on 24-11-2005 for 05 years rigorous imprisonment and to pay of fine of Rs. 10,000/- in default of fine 06months rigorous imprisonment. **(Sentence already undergone by the Hon'ble High Court Chandigarh on 17-11-2010 in CRA- 1095-SB of 2002 & 2218-SB- of 2005)**

7. That, the details of pending cases of the above said convict are as under :-

- (i) FIR No. 153 dated 03/09/1987 U/s U/S 148, 149, 307, 323

IPC & Arms Act. P.S. Kalanwali, District Sirsa (**On Bail in this case as per jail record**)

(ii) FIR No. 19 dated 02/03/2004 U/s U/S 279, 336, 427 IPC & NDPS Act. P.S. Odhan, District Sirsa. (**Case Discharged on 24-04-2006**)

(iii) Complain Case No. 9/2008 U/s PGCP Act P.S. Not Available, District Firojpur (Punjab) (**On Bail in this Case**)."

3. Apart therefrom, it has been claimed by the State that the petitioner availed 04 weeks' parole from 6th of November, 2019 till 5th of December, 2019, but absconded for 01 year, 06 months and 11 days and was arrested by the police on 16.06.2021. Petitioner claims to have represented to the authorities for his temporary release which stands declined by the authorities vide order dated 30th of June, 2023 which has been placed on record as Annexure P-5. A perusal thereof would reveal that temporary release to the petitioner has been declined on the ground that the petitioner falls within the ambit of 'hardcore prisoner' as enumerated under Section 2(g)(v) of 2022 Act.

4. Reply by way of affidavit of respondents No.1 and 2 is on the same lines. Though, so far as the medical condition of the petitioner is concerned, report of the Jail Medical Officer has been appended as Annexure R-4 which reads as under:-

“MEDICAL REPORT

Baldev S/o Gajjan Singh was admitted in Jail on 24.04.2019. On admission his condition was stable and had H/o injury on right wrists with mild swelling.

He presented to jail dispensary with c/o pain in right hip

and h/o Total Hip replacement. For this complaint he has been referred to MAMC AGROHA, PGI ROHTAK AND PGI CHANDIGARH numerous times. He is being managed conservatively by PGIMS Rohtak orthopedic department.

Presently patient complaint of pain during walking and requires stick during walking and requires treatment from tertiary centre.

This is for your Kind Information and Necessary Action.”

5. Thus, even in the opinion of the Jail Medical Authorities, the petitioner requires treatment from tertiary centre.

6. In the considered opinion of this Court the order passed by the Authorities cannot be sustained. The claim of the petitioner for temporary release on ground of medical emergency has been tested on the basis of provisions contained in 2022 Act which is an enactment to provide for temporary release of prisoners for good conduct on certain conditions. The scheme of the Act would further show that the same deals with furlough/parole. The same has been defined under Section 2(f) to 2(i) to mean as under :-

(f) "furlough" means temporary release from custody of a convicted prisoner as an incentive on account of his good behaviour and conduct over a period of time as specified under this Act. The period of furlough may count towards the awarded sentence subject to the conditions as specified in this Act or rules made thereunder;

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

(i) 'custody parole' means escorting of a convicted prisoner under armed police custody to the place of visit (within the territory of Republic of India) and return therefrom for a

specific period and for specific reasons as provided under this Act;

(ii) 'emergency parole' means parole granted to a convicted prisoner by the Superintendent Jail when a member of the convicted prisoner's family has died or is in serious condition or the convicted prisoner himself is in serious condition under section 5:

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

7. Section 5 further deals with temporary release of a convicted prisoner on emergency parole. Section 6 deals with temporary release of a convicted prisoner on custody parole and special provisions for hardcore convicted prisoners.

8. Petitioner herein is seeking emergency parole owing to his own serious medical condition. His case was to be dealt with as per Section 5. Section 6 (2) has an overriding effect over Section 5 and provides that no hardcore convicted prisoner shall be entitled to be released on emergency parole or regular parole or furlough. However, the same is punctuated by proviso which allows even a hardcore convicted prisoner to be released on custody parole for attending funeral of his family members or marriage of his children or siblings. The authority erred in denying the application filed by the petitioner seeking emergency parole invoking Section 6(3). The proviso as contained in Section 6(3) of the 2022 Act is to be applied in a manner in which the authorities have applied the same shall mean that a hardcore prisoner cannot be released in the case of emergency parole even when his medical condition is serious as in the present case and the same

would be in total violation of the right of the prisoner to medical facility.

9. Herein the petitioner is claiming temporary release owing to his medical condition which stands fully verified by the Jail Authorities and have opined that the petitioner indeed needs treatment from tertiary centre. In view of above finding that the petitioner will have a right to medical facilities which has its traces under Article 21 of the Constitution of India, this Court does not find any reason to deny temporary release of the petitioner owing to his medical condition.

10. Consequently, the present petition is allowed. The petitioner is ordered to be released on 4th of September, 2023 subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned as per law. He is directed to surrender back on 19th of September, 2023 at 11.00AM before the concerned Jail Authorities.

11. Ordered accordingly.

September 01, 2023		(PANKAJ JAIN)
Dpr		JUDGE
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No