

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRWP-10810-2022

Date of Decision: 31.07.2023

Kismat Ali

....Petitioner

Versus

State of U.T. Chandigarh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE B.S.WALIA
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Hoshier Singh Jaiswal, Advocate
for the petitioner.

Mr. Dushyant Rana, Advocate and
Mr. Sumit Jain, Additional Public Prosecutor
for respondent – U.T., Chandigarh.

B.S.Walia, J. (Oral)

[1] Prayer in the petition is for setting aside orders Annexure P/1 and Annexure P/2 dated 15.11.2021 and 11.11.2022 whereby applications filed by the petitioner for parole to meet his family members were rejected. Prayer is also for grant of parole to the petitioner for 28 days in terms of Section 3 (1) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, for short 'the Act', to enable the petitioner to meet his family members.

[2] Learned counsel contends that vide order, Annexure P/1 dated 15.11.2021, the Inspector General of Prisons, U.T., Chandigarh, rejected the claim of the petitioner for parole on the ground that the District Magistrate, Amethi, (Uttar Pradesh), vide letter No.1245-46 dated 03.11.2021 had not recommended grant of parole to the convict in view of the report of the

Senior Superintendent of Police, Amethi (Uttar Pradesh) of the petitioner not having a good reputation in the village and in case of release on parole, there being likelihood of his creating a problem and that in the circumstances release of the petitioner was likely to endanger the security of the State Government / maintenance of public order.

Annexure P/2 i.e. order dated 11.11.2022 passed by the Inspector General of Prisons, U.T., Chandigarh, rejected the claim of the petitioner for release on parole on the basis of report of the Senior Superintendent of Police, S.A.S. Nagar, Punjab on the ground that the convict did not have a permanent address, besides the local police had objection to his release and further that in terms of Sections 3 and 4 of the Act, release of the petitioner was likely to endanger the security of the State Government / maintenance of public order.

[3] Learned Additional Public Prosecutor for respondent – U.T., Chandigarh, has reiterated the reasons given in the impugned orders for rejecting the claim of the petitioner for release on parole.

[4] Learned Counsel refers to affidavit dated 20.02.2023 filed by the petitioner's father that in case of release of the petitioner on parole, he would avail the same at his permanent address in District Amethi.

[5] Custody certificate filed by the learned Additional Public Prosecutor, U.T., Chandigarh, reveals that the applicant / appellant has undergone actual custody of 05 years 08 months and 05 days excluding the parole period and 07 years 08 months and 12 days of total sentence including remissions.

[6] Learned Counsel further contends that although the report of the District Magistrate, Amethi, mentions that the petitioner and his family are residing in Village Zirakpur (Punjab) since the past 15-16 years and there is no complaint in Register No.8 of the Police Station against the petitioner, still the report strangely mentions that in case the petitioner is released on parole, law and order situation could get affected besides, the villagers had informed that the petitioner convict was not having a good reputation in the village. Learned counsel contends that the opinion recorded in the communication Annexure R/1 is not based on any material, therefore, has to be ignored as are the reasons given in Annexure P/1 and Annexure P/2 of the release of the petitioner likely to endanger the security of the State Government or the maintenance of public order since the same was not based on any material whatsoever. Learned Counsel further contends that the report that the convict was not having permanent address was also not based on correct appreciation of the material on record, therefore, orders Annexure P/1 and Annexure P/2 were liable to be set aside and the petitioner released on 28 days parole especially in view of co-convicts Mohd. Garib and Kamal Hassan having been granted parole in terms of order Annexure P/4 & Annexure P/5 dated 03.03.2022 and 11.05.2022 in CRWP-1072-2022 & CRWP-3110-2022 to enable them to meet their family members.

[7] Conclusion recorded by the District Magistrate, Amethi, as well as by the Senior Superintendent of Police, S.A.S. Nagar, Punjab, that in case the petitioner is released on parole, there can be breach of law and order and security of the State is without there being any material on the record to

learned Additional Public Prosecutor. Accordingly said conclusions without any supporting material in respect thereto cannot withstand judicial scrutiny. As regard the objection in Annexure P/2 that the petitioner does not have a permanent address the same again is not based on the material on record for as per Annexure R/1, it stands certified by the District Magistrate, Amethi, that permanent address of the petitioner is of Uttar Pradesh but that the petitioner and his family are not residing at said address since the past 15-16 years on account of having shifted to Zirakpur, Punjab but of the family visiting the native Village in Uttar Pradesh to attend marriages and other family functions.

[8] The petitioner has been in custody since 26.11.2017 and as on 30.07.2023 has undergone actual sentence of 05 years 08 months and 05 days of actual custody and 07 years 08 months and 12 days including remissions.

[9] Learned Additional Public Prosecutor, U.T., Chandigarh, has not been able to dispute the position as noted above nor has been able to refer to any material to substantiate the conclusions recorded in the impugned orders / communication. He also concedes that there is no other case registered against the petitioner except FIR No.100 of 2017 under Sections 363, 366-A, 302 and 201 IPC, Police Station Phase-VIII, Mohali (Punjab), in which he was discharged vide order dated 14.12.2017 by the Court of Shri Harpreet Singh, learned Judicial Magistrate First Class, Mohali (Punjab). Thus, learned Additional Public Prosecutor, U.T., Chandigarh, has

not been able to put forth any ground for not accepting the claim of the petitioner for release on parole in terms of Section 3 (1) (d) of the Act.

[10] Accordingly, in the light of the position noted above, the writ petition is allowed. Orders Annexure P/1 and Annexure P/2 dated 15.11.2021 and 11.11.2022 respectively are quashed. Respondents are directed to release the petitioner on parole for a period of four (04) weeks subject to his furnishing bond / surety bonds to the satisfaction of the District Magistrate, Amethi. Immediately on completing the requisite formalities and release on parole, the petitioner shall proceed to the place where he would avail the parole i.e. Village Kasthuni Purab, Police Station Musafir Khanna, Tehsil Musafir Khanna, District Amethi, Uttar Pradesh, and on reaching there, the petitioner will inform his local address to the S.H.O. of the concerned Police Station having jurisdiction over the area and shall also intimate his Mobile Phone number to the S.H.O. concerned and shall also share his live location as and when asked for by the S.H.O. of the area. The SHO concerned would be at liberty to call the petitioner on his mobile phone number to ascertain his location. The petitioner shall also report in the jurisdictional police station every week and shall surrender before the jail authorities on the expiry of the parole period.

(B.S.WALIA)
JUDGE

31.07.2023
VarinderPrashad

(LALIT BATRA)
JUDGE