

CRWP-10392-2023 :1: 2023:PHHC:165395-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203 CRWP-10392-2023 (O&M)
Date of Decision: 22.12.2023

FARHANUZ ZAMA

... Petitioner

VERSUS

STATE OF UT CHANDIGARH AND OTHERS

....Respondents

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

Present: Mr. H. S. Jaswal, Advocate
for the petitioner.

Mr. Ankush Singla, Advocate for
Mr. Manish Bansal, APP, U.T., Chandigarh.

RITU TAGORE, J.

1. Prayer in this writ petition is for quashing/setting aside order dated 29.09.2023 (Annexure P-1) passed by respondent No.1, whereby petitioner's request for releasing him on regular parole for 28 days has been rejected, with further prayer for grant of parole to the petitioner for a period of four weeks to meet his family members under the provisions of Section 3 of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 amended up to date (for short 'the Act').

2. Petitioner was tried, convicted and sentenced to undergo rigorous imprisonment for 12 years under Section 376 IPC by learned Judge, Fast Track Court, Chandigarh vide judgment and order of sentence dated 22.07.2022 and 25.07.2022 respectively. Criminal Appeal bearing No.CRA-D-662-2022 against said conviction and sentence is pending adjudication.

3. Petitioner's application seeking parole for 28 days to meet his family members was rejected vide impugned order dated 29.09.2023 (Annexure P-1). Inspector General of Prisons, UT, Chandigarh while rejecting petitioner's prayer for parole has referred to report of District Magistrate, Bijnor, UP (Annexure R-3) who has not recommended parole to petitioner, while relying upon report of SP, Bijnor (Annexure R-2), who opposed grant of parole to petitioner. Aggrieved therefrom, present criminal writ petition has been filed.

4. Learned counsel for petitioner submits that petitioner is entitled to be considered for release on parole under Section 3 the Act as he fulfils the conditions for grant of parole as contained in applicable rules. He has undergone more than three years incarceration in the jail in the above said case. He has not availed parole or furlough earlier and is seeking the concession of parole to meet his family members for the first time.

5. It is further pleaded that conduct of petitioner has remained good inside jail throughout and has also earned good conduct remissions. Learned counsel for petitioner contends that impugned order dated 29.09.2023 is absolutely unjustified and arbitrary. Prayer for release of petitioner has been rejected arbitrarily and *de hors* the law. It is contended that impugned order is illegal and in contravention of applicable rules, hence should be set aside.

6. Learned counsel for the State, however, opposed prayer of the petitioner on the ground that remission and furlough not being vested rights of the petitioner, parole case of petitioner was rightly rejected by respondent No.1 on the basis of reports of District Magistrate, Bijnor, UP

and Superintendent Police Bijnor, who have not recommended release of petitioner on parole, observing that petitioner has committed a heinous crime.

7. Heard.

8. Section 3 of the Act provides for temporary release of prisoners on certain grounds, which reads as below:-

“1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that –

(a) A member of the prisoner’s family has died; or

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or

(b) The marriage of prisoner’s son or daughter is to be celebrated; or

(c) The temporary release of the prisoner is necessary for sloughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of prisoner’s family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant and is likely to deliver a child; or

(d) It is desirable so to do for any other sufficient cause.

Explanation:- The expression “sufficient cause” includes-

(1) serious damage to life property of the member of the family caused by any natural calamity; or

(2) critical condition of any member of the family on account of accident; or

(3) delivery of child by the wife of the prisoner.

(2).....

(2-A).....

(3).....

(4)..... ”

9. Benefit of parole can be denied to the convict in terms of

Section 6 (ii) of the Act which reads as under:-

“(ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order”

10. 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.

11. In the case of **Bansi Lal versus State of Punjab and others 2016 (4) RCR (Criminal) 1017**, it has been held by the Division Bench of this Court as under:-

“The term 'Security of the State' out of the expressions of 'law and order', and 'public order' is considered more grave. It may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorists operations engineered by foreign agencies. It can also be effected by passing of classified information like documents, secrets, maps etc. to foreign countries or through undesirable foreign links. An act which poses a threat to the State is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In

the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the concerned District Magistrates and competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the concerned District Magistrate and/or the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order as the case may be for temporary release of prisoners on parole.”

12. Perusal of impugned order dated 29.09.2023/endorsement dated 04.10.2023 reveals that Inspector General of Prisons, UT Chandigarh has made a reference to Section 6(ii) of the Act but in a paradoxical manner has not recorded any such satisfaction to the effect that release of petitioner is likely to endanger security of the State or maintenance of public order. Relevant part of impugned order dated 29.09.2023 reads as under:-

“_____The undersigned has gone through the provision of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 which provides that 'Notwithstanding anything contained in Section 3&4, no prisoner shall be entitled to be released under this act if, on the report of District Magistrate, the State Government or any officer authorised by it in this behalf is satisfied that, his release is likely to endanger the security of the State Government or the maintenance of public order.’”

Keeping in mind the report of District Magistrate, Bijnor (U.P) and provision of the aforesaid Act, the undersigned

is of the view that convict Farhanuzz Zama s/o Mohd Ayyub is not entitled to be released on parole. Thus, the parole case of convict Farhanuzz Zama s/o Mohd Ayyub is hereby rejected.”

13. We have perused report of SP, Bijnor (Annexure R-2) as well as report by District Magistrate, Bijnor (Annexure R-3) which do not indicate that release of petitioner is likely to endanger security of the State Government or maintenance of public order. It is to be noticed that report of SP Bijnor is purportedly based upon some report submitted by Incharge of Police Station, Kiratpur and Area Officer, Nazibabad who it is stated have not recommended grant of parole to the petitioner. However, there is no mention about the contents of reports by Incharge Police Station, Kiratpur or Area Officer, Nazibabad and neither are said reports available on record or even with learned counsel for the respondent so as to have enabled us to peruse the same. It is to be noted that as per report of DM, Bijnor it is mentioned that address of petitioner is correct with economic and social condition of the petitioner being normal. Only declaration is that petitioner has committed a heinous crime.

14. It is a settled position that Competent Authority is under a duty to record a specific satisfaction about endangerment of security of the State or maintenance of public order. There has to be substantial material on record for arriving at such satisfaction. First and foremost no satisfaction as is required has been recorded by Inspector General of Police while declining petitioner's request for parole. Moreover, learned counsel for the State is unable to produce report of Incharge Police Station, Kiratpur and Area Officer, Nazibabad to indicate the reasons for their recommendation for rejection of parole to the petitioner. In the

present case, learned counsel for respondent is unable to point out any relevant material. Therefore, in our considered opinion, present case calls for reconsideration of the matter by Competent Authority in accordance with law and in consonance with parameters as laid down for grant of parole.

15. Accordingly, order dated 29.09.2023 (Annexure P-1) is set aside. Competent Authority is directed to reconsider the matter and decide the same expeditiously preferably within a period of four weeks from receipt of certified copy of this order, by passing a speaking order, in accordance with law. Said decision be conveyed to the petitioner.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

22.12.2023
Rimpal

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No