

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

207

CRWP-11941-2022

Date of Decision : 19.01.2023

SANDEEP KUMAR

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Randeep S. Dhull, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J. (Oral)

1. The petitioner has been convicted by the learned Courts below, in respect of charges drawn qua offences punishable under Section 302 IPC, and, under Section 27/54/59 of Arms Act. The convictions, as became recorded against the applicant-petitioner, were made respectively qua FIR bearing No. 226 dated 09.05.2013, registered at Police Station Civil Lines, Bhiwani, and, qua FIR No. 310 dated 09.05.2013, registered at Police Station Sadar Bhiwani. In pursuance to the verdicts of conviction being made upon the petitioner qua the FIRs (supra), rather through the consequent therewith order of sentence(s), hence the substantive sentence(s) of life imprisonment became imposed upon him.

2. The petitioner becoming aggrieved from the verdicts of

conviction and also the consequent therewith sentence(s), as became imposed upon him by the learned Convicting Court(s), in respect of the above FIRs, is stated, to make an appeal thereagainst, before this Court, and, the said appeals are stated to be yet subjudice. However, during the pendency of appeals concerned, the petitioner moved an application before the Competent Authority, claiming therein the relief of his being granted parole. The competent authority through an order, as carried in Annexure P-1, declined to grant the asked for relief to the petitioner.

3. Therefore, the petitioner becomes aggrieved, and, is led to institute thereagainst, the instant criminal writ petition before this Court.

4. Though, in the face of the petitioner receiving a duo of verdicts of conviction, and, also the consequent therewith substantive sentence(s) of life imprisonment, from the learned Convicting Court(s), in respect of FIR (supra), does render him to fall within the definition of a “hard core criminal”, as occurs in the relevant provision of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (hereinafter for short call 'the Act'). However, even in the face of the above, yet there is no further restriction imposed upon the Competent Authority, to yet make an affirmative order upon the convict's claim for his being released on parole. The relevant rule(s)/parameters which regulate the grant of parole, to the convict/petitioner, irrespective of fact, that he is a hard core criminal rather, become carried in the provisions carried in Section 8 of 'the Act', Section whereof becomes extracted hereinafter.

“... 8. Notwithstanding anything contained in this Act, no convicted prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate or the

Deputy Commissioner of Police or the Superintendent of Police or otherwise, the State Government or the competent authority is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace.”

5. A reading of the above extracted Section, discloses that the Competent Authority is to record an objective satisfaction, that the release of the convict on parole, is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace. Therefore, the satisfaction which is to be recorded, by the Competent Authority in respect of the above Section/parameters, does but require qua its becoming planked, upon credible material placed, before the Competent Authority. Such credible material would become comprised in complaints, being reared against the incarcerated applicant, with speakings qua even from the prison concerned, he is evidently meteing threats to the members of the victim's family or is evidently meteing threats to any other person in the village concerned. In case, such material is received by the Competent Authority, thereupon, alone it could be said to thereons rest a valid plank, for its forming a conclusion, that it is completely objectively satisfied, that the release of the applicant, is likely to endanger the security of the State, or the maintenance of public order or cause reasonable apprehension of breach of peace. In the absence of the above material, a mere perfunctory declining order, but obviously unfounded upon any tangible material (supra), would be construable to be an ill informed, and, cryptic order, besides would be construable to be made with the completest lack of application of mind to the parameters (Supra), as become enshrined in the relevant provisions,

and, but obviously would become ridden with a vice of arbitrariness.

6. In the face of the above, yet the declinings by the Competent Authority, of the incarcerated applicant's claim qua his being released on parole, is founded, upon a mere disaffirmative recommendation being made by the authorities below him. However, except the disaffirmative recommendations becoming received by the Competent Authority, from the officers subordinate to him, there is no material accompanying therewith, rather suggestive that the above parameter(s), did in the afore stated manner rather receive the objective attention of the Competent Authority.

7. Therefore, the order declining parole of the petitioner, as appended in Annexure P-1, is quashed and set aside.

8. The further reason for granting the relief to the petitioner becomes embodied, in the factum, as disclosed by the reply on affidavit furnished to the petition by the respondent-State, that rather the petitioner became accorded the facility of parole on six occasions, and, on each such occasion there is no material suggestive that he abused the relief of parole, as became earlier accorded to him.

9. In the wake of the above, also this Court becomes coaxed to draw a conclusion that the declining order, as carried in Annexure P-1, is drawn arbitrary, and, with the completest non application of mind, to the said earlier able availments of parole by the convict/applicant nor also it can be said that there is, at this stage, any tangible material to support, qua the parameters, as, carried in the provisions (supra), become completely satisfied, nor hence any able conclusion can be drawn that the petitioner's claim for parole, rather became validly

10. In view of the above, the petition is allowed, and, the convict/petitioner is granted parole for a period of six weeks. However, if, on the expiry of the period of parole, the petitioner does not re-step into the prison concerned, thereupon, it shall be open to the jurisdictionally empowered police officer concerned, to draw non bailable warrants of arrest against him, and, thereafter produce him before the learned jurisdictional Magistrate concerned, for the latter making an order for the petitioner becoming committed into the jail concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

19.01.2023
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No