

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211

CRWP-12185-2022

Date of decision: 02.09.2023

Mulakh Raj @ Mulkhu

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. By way of instant petition under Article 226/227 of the Constitution of India, the petitioner seeks a writ in the nature of certiorari for setting aside order dated 24.11.2022 (Annexure P-7) whereby he has been denied the benefit of parole to meet his family and relatives. A prayer has been made that the petitioner be granted the benefit of parole under Sections 3 & 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, 'the Act') for a period of 08 weeks to meet his family moreso as he had lost his mother who died on 24.01.2022 and it was a matter of record that his son was suffering from neurological ailments.

2. On being put to notice by this Court on 23.12.2022, learned State counsel filed reply by way of affidavit of N.D. Negi, Superintendent, Central Jail, Bathinda on behalf of respondents No.1, 2 and 4. Learned State counsel has drawn the attention of this Court to the reply filed on behalf of respondents No.1, 2 and 4 and submitted

that the petitioner who is serving a sentence of life imprisonment in case FIR No.56 dated 23.01.2008 under Sections 302/381/120B/411 of the IPC registered at Police Station Civil Lines, Amritsar for having committed offences under Sections 396/120-B/411 of the IPC, was released on parole on 16.06.2020. He was due to surrender back on 12.08.2020, however, due to the outbreak of pandemic Covid-19, his period of parole was extended and ultimately he was directed to surrender back on 29.04.2021. The petitioner, though, surrendered back in the jail, but it was not on 29.04.2021 but on 10.05.2021, after overstaying for 12 days. Learned State counsel has, thus, opposed the prayer made for granting the benefit of parole to the petitioner by submitting that not only had the petitioner violated the conditions of the Act but on account of the aforementioned violation, he had also been convicted and sentenced to imprisonment of 10 days under Section 9 of the Act.

3. Learned counsel appearing for the petitioner, on the other hand, has submitted that no doubt the petitioner had overstayed by 12 days when he was granted the benefit of parole last time i.e. 16.06.2020, however, it was a matter of record that he could not surrender back on time as his son is suffering from a serious neurological ailment and he was busy with his treatment. He has further urged that it is a matter of record and not even disputed by the State, that prior to his release on parole last time, he had been extended the benefit of parole as many as 07 times, and on each and every occasion, he had surrendered back on time. Learned counsel while drawing the attention of this Court to para 10 of the reply filed by the State, has

further submitted that it has not even been disputed by the State that they had verified qua the medical condition of his son and that he was indeed suffering from neurological ailment. He has submitted that no doubt, at present the medical condition of his son is stable, however, being a father, his presence would be required at home, so that he could take his ailing son for follow up with his doctors.

4. I have heard learned counsel for the parties and perused the relevant material on record including the reply filed by the State.

5. It has not been disputed by the learned State counsel that it was only one occasion that the petitioner after being released on parole on 16.06.2020 had overstayed and had surrendered late by only 12 days. Prior thereto, the petitioner had never misused the benefit of parole which had been given to him. It is also a matter of record that on account of the petitioner surrendering late by 12 days when he was last released on parole, he had not only been convicted but also sentenced to 10 days of imprisonment, which he had already undergone. The petitioner, as also not disputed by the learned State counsel, is not involved in any other criminal case or for that matter during the time when he overstayed his parole by 12 days, he had not been involved in any other crime. Hence, this Court sees no justification to deny the benefit of parole to the petitioner since he has admittedly maintained good conduct, in the prison, after his surrender on 10.05.2021.

6. Hon'ble Supreme Court in ***Asfaq vs. State of Rajasthan and others, 2018 (1) SCC (Cri.) 390*** while dealing with the question regarding parole and furlough to prisoners observed as under:

“From the aforesaid discussion, it follows that amongst the various grounds on which parole can be

granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, at least for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.”

7. It needs to be reiterated that a prisoner does not stop being a human, merely because he stands convicted for an offence, hence, he cannot be deprived of the company of his loved ones.

8. Accordingly, the instant petition is allowed and the impugned order dated 24.11.2022 is set aside. The petitioner is granted

parole for a period of 08 weeks from the date of release to the satisfaction of the District Magistrate concerned, who would impose such conditions as may be required to secure the presence of the petitioner in the jail after the parole period is over.

02.09.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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