

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

2024:PHHC:102040-DB



Civil Writ Petition-PIL No. 11 of 2023 (O&M)

Reserved on : 08.08.2024

Pronounced on : **09.08.2024**

Shiromani Gurudwara Prabandhak Committee

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL, JUDGE

Present : Mr. P.S.Hundal, Senior Advocate with
Mr. Gursahib Singh Hundal, Advocate,
Mr. Robindeep Singh Bhullar, Advocate,
Mr. Jasjit Singh Brar, Advocate,
Ms. Arshdeep Kaur, Advocate, for the petitioner.

Mr. Baldev Raj Mahajan, Advocate General, Haryana with
Mr. Pawan Girdhar, Addl. Advocate General, Haryana
for the State of Haryana.

Mr. S.P.Jain, Addl. Solicitor General of India with
Mr. Dheeraj Jain, Senior panel counsel for Govt. of India.

Mr. Anurag Chopra, Addl. Advocate General, Punjab with
Mr. Salil Sabhlok, Sr. Deputy Advocate General, Punjab
for the State of Punjab.

Ms. Tanu Bedi, Amicus Curiae (through v.c.) with
Mr. Akhil Dadwal, Advocate and
Ms. Pooja Dahiya, Advocate.

Mr. R.S.Rai, Senior Advocate,
Mr. Chetan Mittal, Senior Advocate,
Ms. Sonia Mathur, Senior Advocate with
Mr. Gautam Dutt, Advocate,
Mr. Anurag Arora, Advocate,
Ms. Rubina Virmani, Advocate,
Ms. Radhika Mehta, Advocate,
Mr. Harish Chhabra, Advocate,
Mr. Amar D.Kamra, Advocate,
Mr. Mayank Aggarwal, Advocate,
Mr. Aman Jha, Advocate,
Mr. Farhad Kohli, Advocate and
Mr. Jitender Khurana, Advocate, for respondent No.9.

SHEEL NAGU, CHIEF JUSTICE

1. This petition under Article 226 of the Constitution of India is filed by Shiromani Gurudwara Prabandhak Samiti, which is a statutory body constituted under the Sikh Gurudwaras Act, 1925.

2. The alleged public cause raised herein is that the State of Haryana while granting temporary release to respondent No.9 is misusing its powers under Section 11 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (for brevity 'the Act of 2022'). It is contended that respondent No.9, who is suffering multiple sentences including that of life for committing grave offences such as murder and rape, if released, would jeopardize the sovereignty and integrity of India and adversely affect public order. It is contended that respondent No.9 is a hardcore criminal and yet the State of Haryana merely to favour the said respondent has granted temporary release by way of parole vide Annexure P-1 dated 20.01.2023 for a period of 40 days subject to certain conditions contained therein.

2.1 Besides the aforesaid ground, another ground raised by learned senior counsel for the petitioner is that for grant of parole to respondent No.9, the Act of 2022 is inapplicable. Instead it is contended that Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for brevity 'the Act of 1988') should have been applied while considering and granting parole to respondent No.9.

3. The first and the foremost question which falls for consideration before this Court is as to which among the two Acts (Act of 2022 or the Act of 1988) should have been invoked for considering the prayer made by respondent No.9 for temporary release and passing the impugned order Annexure P-1 dated 20.01.2023.

3.1 Some of the relevant undisputed facts as regards the claim of furlough/parole qua respondent No.9 are that an application for releasing on parole was made by respondent No.9 after the Act of 2022 became operational. It is further not disputed at the Bar that the filing of application by respondent No.9 seeking parole, consideration of the same and passing of order of parole vide Annexure P-1, were all undertaken after the Act of 2022 became operational. It is further not disputed at the Bar that none of the provisions of the Act of 2022 are challenged herein.

3.2 The Act of 1988 stood repealed by the Act of 2022 vide Haryana Government Gazette Notification dated 11.04.2022. Section 14 of the Act of 2022 is the repealing Section which is reproduced hereinbelow for ready reference and convenience:-

“14. The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (28 of 1988), is hereby repealed:

Provided that such repeal shall not affect-

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired or incurred under the Act so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that anything done or any action taken under the Act so repealed shall be deemed to have been done or taken under the

corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.”

3.3 By relying upon the aforesaid repealing provision, learned counsel for the petitioner urges that since the offences in question which led to conviction and sentencing of respondent No.9, had taken place prior to the Act of 2022 come into operation, for the purpose of processing of application for temporary release (furlough/parole) of respondent No.9, the earlier Act of 1988 ought to have been applied.

3.4 The aforesaid argument of learned senior counsel for the petitioner is liable to be rejected at the very outset for the simple reason that the Act of 2022 governs the process of conditional temporary release of prisoners for good conduct. The object of the Act of 2022 is to temporarily release the prisoners for good conduct by way of furlough/parole. The procedure for consideration of the application for release of prisoners on parole/furlough is provided in Sections 3 and 4 of the Act of 2022 which is subject to conditions and procedure stipulated in Section 11 & 12. The competent authority in case of respondent No.9 is the Divisional Commissioner of Police as per notification dated 15.06.2022 issued by the Jail Department of Government of Haryana issued in exercise of the powers under Section 2(1)(a) of the Act of 2022.

The applicability of the Act of 2022 as mentioned in Section 1(3) is confined to convicted prisoners who are confined by the orders of the Court having jurisdiction in Haryana. Respondent No.9 no doubt was convicted by the Courts situated within the State of Haryana.

3.5 The object of the Act of 2022 is to grant temporary release to the prisoners for good conduct with certain conditions. It is obvious that the Act of 2022 would apply to all such applications made by the prisoners seeking parole/furlough on or after 11.04.2022 when the Act of 2022 came into operation. Pertinently the applicability of the Act of 2022 cannot be relatable to any incident e.g. offence or conviction, which took place prior to the filing of an application under Section 3/4 of the Act of 2022.

3.6 The corollary to the aforesaid is that the 1988 repealed Act would not apply for the application which respondent No.9 made for release on parole which led to the passing of impugned order Annexure P-1.

3.7 From the aforesaid discussion, it is crystal clear that the Act of 2022 has rightly been applied by the State of Haryana while considering and deciding the application of parole filed by respondent No.9 resulting in passing of order Annexure P-1.

4. Another factor which stares at the face of this Court is as to whether this Court should dwell upon the merits of the matter when the period of parole of 40 days granted to respondent No.9 vide Annexure P-1 is over in March-2023 itself.

4.1 Undisputedly, respondent No.9 has since surrendered and is lodged in jail. Though the State of Haryana in its response has furnished data describing various periods and the dates on which the benefit of temporary release was extended to respondent No.9 but this Court refrains from considering the justifiability of these temporary releases since the cause of challenge to Annexure P-1 has become infructuous due to the expiry of period of parole granted vide Annexure P-1.

5. This Court would also not like to comment upon the possibility of any breach in law & order/public orders on temporary release of respondent No.9 in the future since any such attempt would lead to venturing the arena of assumptions & presumptions.

6. However, this Court would like to observe that in case of any application is made by respondent No.9 for temporary release, the same shall be considered strictly in accordance with the provisions of the Act of 2022 without the competent authority indulging in arbitrariness or favoritism or discrimination.

7. That this Court vide order dated 13.10.2023 had enlarged the scope of this Public Interest Litigation to include the aspect of preparation of digital app at every district level where applications made for grant of furlough/parole by all the inmates can be registered and the process of grant of furlough/parole should be uploaded on that application.

Since this Court is not dealing with the said aspect, let a separate Public Interest Litigation be registered dealing with the said aspect alone.

8. With the aforesaid observations, this Court disposes of this petition with the hope that the competent authority under the Act of 2022 will pass appropriate orders, if called upon to do so, within the four corners of the Act of 2022.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

09.08.2024
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No