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

CRWP-1899-2024

Date of Decision : 04.03.2024

JAGDISH @ KALU NATH

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

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

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (Oral)

1. The present petitioner preferred an application before the competent authority, whereby he claimed his becoming released on parole for a period lasting 10 weeks.

2. The competent authority through Annexure P-1, though granted relief to the present petitioner for his becoming released on parole for a period of 10 weeks. However, the competent authority also imposed certain conditions, in terms of Section 11 of The Haryana Good Conduct Prisoners (Temporary Release) Act, 2022, rather upon him, inasmuch as, the apposite statutory condition relating to his executing personal bonds comprised in a sum of Rs.2 lakh along with

two sureties in the like amount, thus becoming imposed upon him.

3. The present petitioner becomes aggrieved from the imposition of the above condition, as became embodied in Annexure P-1.

4. The learned counsel for the petitioner submits, that the said imposed condition, is both onerous as well as does completely frustrate the very purpose of the order whereby he became released on parole. Therefore, he argues that the said condition embodied in Annexure P-1 be quashed, and, set aside on the ground, that the same is unreasonable as well as extremely harsh.

5. The learned counsel for the petitioner in making the above submission rests them on the ground, that the present petitioner is beset with immense penury, and, also his sureties may not be adequately financially well resourced, so as to respectively enable the present petitioner as well as the two local sureties, thus to furnish personal as well as surety bonds comprised in a sum of Rs. 2 lakh each.

6. The learned State counsel submits, that since the present petitioner had earlier complied with the said condition, therefore, the petitioner is estopped from making any argument, that the said imposed conditions are extremely harsh and oppressive, and, as such are required to be quashed, and, set aside.

7. For the reasons to be assigned hereinafter the said imposed condition is, to the considered mind of this Court both harsh and oppressive. Therefore, the said condition is required to be quashed, and, set aside.

8. The reason for drawing the above inference emanates from

a closest reading of the relevant hereafter extracted provisions, which became relied upon by the competent authority. They enclose therein, a discretion becoming vested in the competent authority to either insist, upon the petitioner to furnish personal and surety bonds comprised in a sum of Rs. 1 lakh each or to impose, upon him a condition qua his furnishing personal and surety bonds comprised in a sum of Rs. 3 lakh each. Therefore, with the said statutory discretion becoming vested vis-a-vis the competent authority, as such it was required to be exercised with extreme caution, but necessarily bearing in mind the factum of the pecuniary condition of the petitioner, and/or, of his surety. However, it appears that the said discretion has been merely exercised in a most perfunctory and mechanical manner, and, that too, on the basis of the fact, that the present petitioner had earlier complied with the said condition, therefore, there was a necessity of the said earlier imposed condition (supra), becoming re-imposed in Annexure P-1.

“11 xxx

(11) Before any convicted prisoner is released on parole or furlough, he shall execute a bond amounting to minimum one lakh rupees extendable to three lakh rupees alongwith minimum two sureties to the satisfaction of the competent authority. The bond shall be conditioned that the convicted prisoner or the hardcore convicted prisoner, as the case may be, shall surrender before the Jail Superintendent before the expiry of furlough or parole period: xxx”

9. However, the factum that the present petitioner had earlier complied with the impugned conditions, does not yet satisfy the judicial conscience of this Court, that therebys yet the competent authority became relieved of its dire duty, to make an insightful application of

mind to the factum, that the statutory discretion (supra), which was to be so exercised by it, does become so exercised not in a capricious or whimsical manner, rather it becomes exercised so as to enable the petitioner to avail the facility of parole as became ultimately accorded to him.

10. The necessity of the above arose, from the factum that if the conditions are extremely harsh and oppressive, thereupon when they ultimately frustrate the purpose of the relief granted to the present petitioner, thereupon the very purpose of the said facility of parole, as, assigned to the prisoners, would but be completely snatched, and/or, thereby the temporary release of the prisoners from the prisons concerned, which is a holistic purpose behind the engraftment of the provisions embodied in the Act (supra), rather would also become rendered completely nugatory. To obviate the ill consequence (supra), thus the said imposed condition but cannot be sustained. Moreso, when even the imposition of the modified condition may have served the relevant purpose, unless evidence to the contrary become adduced, evidence whereof is neither discussed nor lawfully rejected in the impugned order.

11. In consequence, the challenge made to the impugned order is accepted, and, the impugned order is modified to the extent that the insistence made, upon the the present petitioner to furnish personal and surety bonds comprised in a sum of Rs. 2 lakh each along with two like sureties each, is modified to his furnishing before the competent authority personal and surety bonds comprised in a sum of Rs.1 lakh each.

12. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

04.03.2024

kavneet singh

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