

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 13.12.2023
Pronounced on : 08.01.2024

CRM-M No.12665 of 2022 (O&M)

Taqdir..... Petitioner

versus

State of Haryana..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J.

1 Petitioner is seeking quashing of FIR No.47 dated 19.03.2022 registered at Police Station Sadar, Bahadurgarh, Jhajjar under Sections 8 & 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short ‘the 1988 Act’).

2 The petitioner was booked in FIR No.215 dated 22.06.2010 registered for offences punishable under Sections 302/307/120-B IPC at Police Station City Bahadurgarh, District Jhajjar. He was convicted and sentenced to imprisonment for life. While serving sentence, he was temporarily released for 25 days on agricultural parole w.e.f. 09.12.2019 in terms of release order passed by District Magistrate, Jhajjar dated

09.12.2019. He was directed to surrender on or before 04.01.2020 i.e. on expiry of 25 days agricultural parole. Petitioner approached this Court in CRWP No.2240 of 2020 seeking extension of parole. Vide order dated 28.01.2021 the parole of the petitioner was extended till 30.08.2021. The petition was finally dismissed on 21.02.2022. The petitioner opted not to surrender on 30.08.2021 (i.e. when the extension granted by this Court expired) and remained an absconder. He surrendered before Jail authorities only on 22.02.2022.

3 On 02.03.2022, the appeal preferred by the petitioner against order of conviction was heard. The conviction of the petitioner was set aside and he was ordered to be acquitted. Copy of the judgment passed by Supreme Court in Criminal Appeal No.1537 of 2018 titled as ***Taqdir Vs. State of Haryana*** dated 02.02.2022 has been placed on record as Annexure P-3.

4 Learned counsel for the petitioner submits that the impugned FIR registered under Sections 8 & 9 of the 1988 Act cannot survive in view of the fact that the petitioner now stands acquitted by the Apex Court. It has been contended by him that the acquittal will take a retrospective effect and thus on the day, the petitioner is alleged to have jumped the parole he was not a convict and was not required to serve sentence. Reliance is being placed upon observations made by Apex Court in the case of ***Manni Lal Vs. Shri Parmai Lal & ors., (1971) AIR 330***. He further submits that there was a decision taken by High-Powered Committee held under the Chairmanship of Hon'ble Judge of this Court dated 09.05.2021 which extended the parole

of the convicts by 90 days.

5 Per contra learned State counsel submits that so far as offence of the petitioner under Sections 8 & 9 of the 1988 Act is concerned, the petitioner cannot hide behind order of acquittal which is a subsequent event. The moment the petitioner jumped the parole, offence was committed. He further submits that rather in terms of directions issued by the High-Powered Committee of this Court exception was carved out to deny release on special parole to the convicts who have violated the order of parole or of special parole.

6 I have heard rival contentions of the learned counsels representing the parties and have gone through the records of the case carefully.

7 Facts are not much in dispute. The questions that arise for the consideration of this Court are :-

(a) Can the petitioner take refuge under the decision of high-Powered Committee to claim that he was not required to surrender on expiry of extended parole; and

(b) Whether the subsequent acquittal of the petitioner in the main case for which he was serving sentence can have an effect of erasing the conduct of the petitioner which constitutes new offence?

8 Coming on to the first question, the relevant extract of High-Powered Committee reads as under :-

FOR RELEASE OF CONVICTED PRISONERS

(A). *The convicts who are at present on parole should be granted **Special Parole** for **90 days** (as a one time measure only).*

(B). *The convicts who have previously availed Special Parole, as per the orders of High Powered Committee in the year 2020 and surrendered in time, should be granted fresh **90 days Special Parole** (as a one time measure only) on the same set of sureties, if the sureties so consented, and without holding fresh inquiry. Further, in case new sureties are required (in case consent not given by the old sureties or otherwise), then, on fresh sureties but should be without holding fresh inquiry in order to attain expeditious release on Special Parole.*

(C). *The convicts who have previously availed Special Parole, as per the orders of High Powered Committee In the year 2020 and surrendered in time and who are also facing trial in other cases, shall be considered for release on **90 days Special Parole** (as a one time measure only) after verification by the office of D.M. concerned, if they are on bail in those pending case(s).*

(D). *The convicts who have not availed parole or special parole till date and who have now applied for parole or will apply for special parole, then, the District Magistrate concerned is hereby directed to process all (pending as well as new) application liberally and sympathetically, on urgent basis and preferably within 07 days from, and latest within 10 days of, the receipt of the application.*

Exceptions:

*The following category of convicts/prisoners, even if they are falling in the above criteria, **shall not** be released on **Special Parole**:-*

(a) The convicts/prisoners who are foreign nationals.

(b) The convicts who are confirmed or suspected cases of Covid, or are kept under observation for Covid, or who can cause infection if released, in such cases the Jail Authorities shall follow the latest guidelines of Health Department in this regard. However, in future they may be considered for the benefits of Special Parole on the basis of their medical reports.

(c) The convicts who have violated the Parole or special parole conditions and have been re-arrested during last six months.

Note:-

The period of release under aforesaid directions shall not be counted towards the total period of the sentence of the prisoner/convict. Further, the Jail Superintendent shall obtain declaration from the convict to the effect that he/she shall not claim counting of the period of special parole against the total period of sentence at the time of applying for special parole itself.”

9 From the bare perusal of the aforesaid decision, it is evident that in case the petitioner thought he was entitled for special parole in terms thereof, he was required to surrender in time and thereafter seek consideration for special parole in terms of decision at point (C). Rather the petitioner by sheer dint of his conduct led to a situation where he is required to be dealt with in accordance of the decision taken by the High Powered Committee falling in exceptions carved out.

10 In view of above, this Court does not find that the decision taken by the High-Powered Committee dated 09.05.2021 in any way helps the cause of the petitioner.

- 11 Resultantly, the first question is answered against the petitioner.
- 12 Coming on to the second question, Sections 8 & 9 of the 1988 Act need to be perused.

“8. Liability of prisoner to surrender on expiry of release period and consequences of overstaying. (1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of the Jail from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer incharge of the prison from which he was released to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the Jail, namely:-

(a) a maximum cut of five days remission for each day of overstay;

(b) stoppage of canteen concession for a maximum period of one

(c) withholding concession of either interviews or letters or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from higher to a lower class or grade.

9. Penalty for failure to surrender.- (1) Any prisoner who is liable to be arrested under sub-section (2) of section 8, shall be punishable with imprisonment of either description which may extend to [three years but shall not be less than two years).

(2) An offence punishable under sub-section (1) shall be deemed to be cognizable and non-bailable.

Explanation.- The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.”

13 Learned counsel representing the petitioner is not in a position to deny that prima-facie at this stage it cannot be said that the conduct of the petitioner as alleged in the FIR does not constitute offence punishable under Sections 8 & 9 of the 1988 Act. However, the consideration relates to effect of the observations made in ***Manni Lal's case supra***. In the said case the question related to election of respondent No.1 Shri Parmai Lal. It was claimed that the elected candidate i.e. Parmai Lal was disqualified under Section 8 (2) of the Representation of the People Act 1951 as he was convicted for offences punishable under Sections 148 and Section 304 IPC. The last date for filing nomination was 09.01.1969. He was convicted two days thereafter on 11.01.1969. He filed appeal against his conviction on 16.01.1969. Polling took place on 09.02.1969. Result was declared on 11.02.1969. He was declared successful candidate having secured largest number of votes. On 30.09.1969 in appeal filed by him his conviction and sentence was set aside. At that time election petition was pending. Election petition was decided vide judgment dated 27.10.1969. In these circumstances, Apex Court observed as under :-

“This argument overlooks the fact that an appellate order of acquittal, takes effect retrospectively and the conviction and sentence are deemed to be set aside with effect from the date they were recorded. Once an order of acquittal has been made, it has to be held that the conviction has been wiped out and did not exist at all. The disqualification, which existed on the, 9th or 11th February, 1969 as a fact, was wiped out when the

conviction recorded on 11th January, 1969 was set aside and that acquittal took effect from that very date. It is significant that the High Court, under section 106 (1) (a) of the Act, is to declare the election of a returned candidate to be void if the High Court is of opinion that, on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or the Act. It is true that the opinion has to be formed as to whether the successful candidate was disqualified on the date of his election; but, this opinion is to be formed by the High Court at the time of pronouncing the judgment in the election petition. In this case, the High Court proceeded to pronounce the judgment on 27th October, 1969. The High Court had before it the order of acquittal which had taken effect retrospectively from 11th January, 1969. It was, therefore, impossible for the High Court to arrive at the opinion that on 9th or 11th February, 1969, respondent No. 1 was disqualified. The conviction and sentence had been retrospectively wiped out, so that the opinion required to be formed by the High Court to declare the election void could not be formed. The situation is similar to one that could have come into existence if Parliament itself had chosen to repeal s. 8 (2) of the Act retrospectively with effect from 11th January, 1969. Learned counsel conceded that, if a law had been passed repealing s. 8 (2) of the Act and the law had been deemed to come into effect from 11th January, 1969, he could not have possibly urged thereafter, when the point came up before the High Court, that respondent No. 1 was disqualified on 9th or 11th February, 1969. The setting aside of the conviction and sentence in- appeal has a similar effect of wiping out retrospectively the disqualification. The High Court was, therefore, right in holding, that respondent No. 1 was not disqualified and that his election was not void on that ground.”

14 In the considered opinion of this Court, the judgment in ***Manni Lal's case supra*** is of no help to the petitioner in the present case. There the question was with respect to disqualification which was to be ascertained *vis-à-vis* last date of filing of nomination papers. On that date admittedly respondent No.1 i.e. Parmai Lal was fully eligible and had not earned conviction. He was convicted subsequently and the said conviction was set aside before adjudication of Election Petition. In the present case, on the

day the offence is alleged to have been committed by the petitioner, he was a convict serving sentence. As per the facts he failed to surrender in time as required under law leading to commission of offence. Thus even if it is taken that the acquittal of the petitioner shall take retrospective effect, the fiction created by law in favour of the petitioner cannot take an effect of erasing the act and omission on part of the petitioner which prima-facie constitutes offence under law.

15 Resultantly, second question as framed above in para No.7 is also answered against the petitioner.

16 Keeping in view the aforesaid discussion, present petition seeking quashing of FIR is hereby ordered to be dismissed.

17 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

18 Pending miscellaneous application, if any, shall also stand disposed off.

08.01.2024

Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

Whether Reportable :

Yes

Yes