



212 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH
CRWP-2571-2024
Date of Decision:23.08.2024

Gaurav Sharma

...Petitioner

Vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Sukhpreet Kaur Grewal, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

Mr. Dharam Chand Mittal, Senior Panel Counsel, GOI
for respondent No.2.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Article 226 of the Constitution of India read with Section 3(1)(c)(d)(aa) of the Punjab Good Conduct Prisoners (Temporary Release), Act as well as Article 10 of the Agreement between the Government of United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on the transfer of sentenced persons, with a prayer to direct the respondents to release the petitioner on parole for a period of 08 weeks to enable him to meet his father and to make arrangements for the repair of his house.

2. Learned counsel for the petitioner contends that the petitioner was involved in a murder case in United Kingdom and a case bearing No. T20147405 was registered against him. The petitioner was tried by the Court on the said charge and was sentenced to life imprisonment with a minimum period to be served was fixed as 26 years. The order of sentence dated 22.05.2015 has



been annexed as Annexure P-2 with the petition. Learned counsel further submits that there is an agreement dated 18.02.2005 between the Union of India and the United Kingdom including Northern Ireland regarding transfer of sentenced persons, because the law is common in all these countries. Since the petitioner is a citizen of India, his case was moved by the Union Government for repatriation to India in view of the agreement. Since the United Kingdom Government had accepted the request of the petitioner, the petitioner was transferred to India and at present he is lodged in Central Jail, Kapurthala. He further contends that since the petitioner is confined in Central Jail, Kapurthala, as per the provisions of Punjab Good Conduct Prisoners (Temporary Release), Act 1962, he is also entitled to grant of regular parole by this Court. Learned counsel further contends that Atam Parkash Sharma, petitioner's father had submitted an application (Annexure P-4) to the Superintendent Central jail, Kapurthala to allow the petitioner be released on parole for some days to look after his ailing father and to repair his house. Even, the elder brother of the petitioner had died 20 years ago and the mother of the petitioner also died in the year 2009. Even his father Atam Parkash Sharma has expired during the pendency of the present petition before this Court. Learned counsel for the petitioner has also relied upon the law laid down by this Court in CRWP-8025-2021 and CRWP-11443-2022, Where similar relief has been granted to the convicts from United Kingdom, who were transferred to India to serve the remaining sentence.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner was transferred to India under the bilateral agreement dated



21.11.2005 executed between the Governments of United Kingdom and Northern Ireland and the Government of Republic of India. The petitioner was transferred to Central Jail, Kapurthala on 30.10.2018 and he is undergoing the sentence in Central Jail, Kapurthala. Still further, as per the provisions of the Repatriation of Prisoners Act, 2003, Union of India or its designated authority will be the competent authority to consider the application filed by the petitioner.

4. Learned counsel appearing on behalf of Union of India has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that under the British law, while sentencing a person to the imprisonment for life, the Court sets a minimum term which the concerned convicted person must serve before he could be considered for release. The petitioner's minimum term was set at 26 years by the U.K Court, while awarding him life sentence, which will complete in November 2039. The petitioner was transferred from United Kingdom to India on 30.10.2018 under the agreement on transfer of sentenced persons between the Government of India and U.K to serve the remainder of his sentence in an Indian Jail and is presently confined in Punjab. Learned counsel further contends that the U.K authorities had not supported the grant of parole to the petitioner and the prayer made by the petitioner is liable to be dismissed by this Court.

5. A similar controversy arose for consideration by this Court in CRWP-8025-2021 titled as **"Azad Singh Vs. State of Punjab and Others"** and this Court held as follows:-

Repatriation of Prisoners Act, 2003 (for short, 2003 Act) provides for the transfer of certain prisoners from India to country or place



outside India and reception in India of certain prisoners from country or place outside India. Out of Various international conventions governing the repatriation of prisoners, primary is "The International Covenant on Civil and Political Rights, 1966" which is a multilateral treaty adopted by the United Nations General Assembly and Article 10 of the same states that individuals deprived of personal liberty shall be treated with humanity and dignity. Accordingly, basic theme behind 2003 Act is the cultural differences and distance from family in unfamiliar circumstances will aggravate the impact of sentence that has been awarded to an individual and therefore a prisoner who is a citizen of another country shall be returned back for the purpose of social rehabilitation of sentenced persons into their own countries;

On the same lines, The primary purpose behind Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, 1962 Act) for granting Parole (or temporary release as recognized in the State of Punjab) is to release the prisoner to meet the exigencies of a specific circumstance and for re-establishing social ties so that subsequent assimilation of the convict in society post sentence, is relatively easier.

A high level purview of both these laws represents the recognition by the lawmakers that even convicted prisoners have right to life and both of these laws positively extend the scope of this right into a prisoner's life. Therefore while giving effect to these laws in a particular case, it becomes necessary to keep in mind the overall intent and purpose behind these laws. Even a coordinate bench of this Court in CRWP-5315-2020 titled as "Jaswinder Singh Dosanjh vs State Of Punjab And Others" decided on 02.09.2020, in similar facts and circumstances with similar contentions by the respondent No 4 granted the parole.



With respect to judgment by another coordinate bench, cited by counsel for respondent No 4, while there cannot be any doubt with the finding of coordinate bench in Harpreet Singh's case (supra) that terms of sentence of a repatriated prisoner will be subject to the terms of contracting countries, however, I am unable to find myself in conformity with the other finding that concession of parole should not be extended to prisoners until they move to open prison conditions, which happens approximately 2 years prior to the minimum term as provided in UK law.

6. It is settled law that if there is a conflict between the provisions of a municipal/domestic law and International law, former will prevail. For this purpose, reliance can be placed on **"Jolly George Vergese v. Bank of Cochin, reported as 1980 SCR (2) 913"**, in which Hon'ble Apex Court observed as below:

"Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in "Human Rights-in National and International Law" rightly points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law. From the national point of view the national rules alone count. With regard to interpretation, however, it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations."

7. Further, Hon'ble Apex Court in **"State of West Bengal v. Kesoram Industries reported as [2004] 1 SCR 564"** observed that a treaty entered into by India cannot become law of the land and it cannot be



implemented unless Parliament passes a law as required under Article 253.

8. It would also be apposite to quote the relevant observation of Hon'ble Apex Court in "**Bhavesh Jayanti Lakhani vs State of Maharashtra & Ors. reported as 2009(9) SCC 551**", which are as below:

"India follows the doctrine of dualism and not monoism. We may, however, hasten to add that this Court, however, at times for the purpose of interpretation of statute has taken into consideration not only the treaties in which India is a party but also declarations, covenants and resolutions passed in different International Conferences.

The Act as also the treaties entered into by and between India and foreign countries are admittedly subject to our municipal law. Enforcement of a treaty is in the hands of the Executive. But such enforcement must conform to the domestic law of the country. Whenever, it is well known, a conflict arises between a treaty and the domestic law or a municipal law, the latter shall prevail."

In view of the aforementioned judgements, it is apparent that in case of a conflict between an international treaty and domestic law, it is domestic law which would prevail. Present case is even different, because if the argument by the learned Counsel for respondent No 4 is accepted, then by way of this treaty / agreement, law of UK regarding parole is being made applicable in India, when terms of agreement are silent on this aspect, which is completely inconceivable. Highest priority would have to be accorded to the domestic law, if the same is silent on any subject, then terms of agreement / treaty would come into picture and only if neither domestic law nor terms of bilateral treaty provide any guidance on a subject, reliance can be placed on relevant law of another country to give them a meaningful interpretation. Unfortunately, this aspect empowered by the authorities of Hon'ble Apex Courts, including the judgment of this Court in



Jaswinder's case (supra) were not brought in the knowledge of this Court while deciding the matter in Harpreet Singh's case.

In the presence of provisions of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and Repatriation of Prisoners Act, 2003, conjoint with silence of bilateral treaty on the aspect of parole (temporary release), this court is duty bound to implement the mandate of relevant provisions of these laws. When there is specific provision in Section 3 of 1962 Act governing the grant for parole/ temporary release, submission by the learned Counsel for respondent No 4 that petitioner cannot be granted parole in view of UK law is devoid of any merit and is liable to be discarded. A perusal of reply by respondent No 4 shows that even UK authorities does not stipulate a complete bar on parole and in exceptional or compelling compassionate circumstances, parole for relatively shorter periods can be granted.

9. *Above all, the stance of respondent No 4 has been quite opposite before Delhi High court in W.P.(CRL) 1070/2020 titled as **"Sukhvinder Kaur vs State (Govt. Of Nct Of Delhi) & Ors"** decided on 14.10.2020 and relevant para is being produced hereunder:-*

"5. Since the petitioner had been convicted by a court in Sri Lanka, and had been repatriated to India to serve sentence under the provisions of the Repatriation of Prisoners Act 2003, a preliminary question arose in the present proceedings as to whether the prison rules applicable to prisoners in Delhi would also apply to the petitioner. On this point, Ms. Suman Chauhan, learned counsel for respondent No.2/Ministry of Home Affairs, Government of India had drawn attention to communication dated 04.08.2020, whereby the Ministry had clarified that prisoners serving sentence in India after repatriation under the Repatriation of Prisoners Act 2003 would be governed by the prison rules of the receiving State, which in this case was Delhi, India; and



accordingly the Ministry had confirmed that the petitioner would be governed by the Delhi Prison Rules 2018 and other orders issued by the Government of NCT of Delhi.”

Though, this communication was brought to the knowledge of the Hon’ble Court in Harpreet Singh’s case, however, it was not taken into consideration by observing that it was in reference to Transfer of Sentenced Persons (TSP) agreement between India and Sri Lanka and its terms cannot be made applicable to persons transferred between UK and India. In this context, it needs to be taken into consideration that these agreements are standard agreements having almost identical clauses and Article 7 relied upon as the basis of instruction dated 04.08.2020 is also present in identical terms in IndoUK agreement as well. In addition to that it will be also violative of Article 14 of Constitution of India if persons repatriated from Sri Lanka or other countries are granted parole but persons repatriated from UK, having same terms of clause, are not given any such relaxation.

Additionally, there are other reasons as well for holding so:

When agreement is silent with respect to parole, instructions received from the UK authorities cannot be considered at par with codified law and cannot supersede the benevolent provisions of 1962 Act. Merely because some individual in past has abused the period of parole granted to him, shall not come in the way of a human right of other similar persons including petitioner. Even instruction dated 21.08.2020 by UK authorities, which were issued after this incident, a convict may be temporarily released after imposing appropriate conditions.

Article 7 of the Indo-UK agreement stipulates that subject to the provisions of article 10 of this agreement, enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate



decisions. When article 10 of the agreement is silent with respect to grant of parole, law applicable in the receiving state i.e. India would become applicable. Prison management and administration, as a legislative subject, falls under Entry 4 of the State List i.e. List II of Schedule VII to the Indian Constitution, accordingly, it is in the domain of the State Legislature and laws prevalent in State of Punjab which would be applicable.

The only restriction stipulated in Article 7 is that receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. By granting parole, legal nature and duration of the sentence is not being interfered with in any way as period of parole is not liable to be deducted from the duration of sentence. Rather, Article 7 further stipulates that if the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. If receiving state i.e. India in furtherance of right to liberty as enshrined under Article 21 of Constitution of India has provision for parole, then it's benefit must be granted to a prisoner, if otherwise there is no hindrance or legal impediment in doing so.

The above mentioned stipulation in Article 7 is also present in identical terms in section 13(6) of 2003 Act, therefore to content that benevolent provisions of Indian law cannot be made applicable does not have any substance.

In that context, it is also necessary to mention here that fundamental rights are not granted by the State rather they are inherent in a human and only recognised by the state. State is merely entitled to regulate them but in no way, it can create an absolute bar on these rights.



10. Adverting to the facts of the present case, it is apparent that the petitioner was transferred to Central Jail, Kapurthala on 30.10.2018 and is in custody since then. Thus, the petitioner is in custody for almost 06 years in Central Jail, Kapurthala. Still further, from the documents placed on record by the petitioner, it is apparent that his physical presence is required for the purpose, as mentioned in his application submitted to the jail authorities. It would also be violation of Article 300 (A) of the Constitution of India, if the petitioner is not able to put property to his use at the time of his need save by authority of law. Even the case of the petitioner is squarely covered by the law laid down by this Court in the matter of Azad Singh (Supra) and the petition deserves to be allowed by this Court.

11. As a sequel to the above discussion, the present petition is allowed and the petitioner is ordered to be released on parole from 01.09.2024 for a period of 04 weeks, subject to his furnishing requisite bonds to the satisfaction of the competent authority/District Magistrate. The petitioner shall surrender before the jail authority on completion of period of 04 weeks.

12. Pending application(s), if any, stand(s), disposed of, accordingly.

23.08.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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