



290 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-3105-2024
Decided on:-07.05.2024

Azad Singh

....Petitioner..

vs.

State of Punjab and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Dr. Bandana Trikha, Advocate,
for the petitioner (joined through video-conferencing).

Mr. Siddharth Sandhu, AAG, Punjab.

Mr. Dharam Chand Mittal, Senior Panel Counsel,
for respondent No.4-UOI.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Article 226 of the Constitution of India, prayer has been made for issuance of direction to the respondents to allow the emergency parole for four or six weeks to the petitioner in terms of Section 3(1) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, "1962 Act"), subject to the satisfaction of District Magistrate, Fatehgarh Sahib on the adequate surety/security bonds, besides, challenging the order/communication dated 15.03.2024 (Annexure P-2).

2. Notice of motion in the present case was issued on 08.04.2024 while passing the following order:-

"By way of present petition filed under Section 226 of

the Constitution of India, prayer has been made for setting aside the order dated 15.03.2024 passed by respondent No.3, whereby the petitioner has been declined emergency parole of house repair.

2. *The aforesaid prayer has been declined for the following reason:-*

“The Superintendent Central Jail, Patiala, has rejected his application annexed at Annexure P-2, that the petitioner is not eligible for parole because an email has received from the Home Department of the Indian Government addressed to the Head office of the Department of Prison, Chandigarh, Punjab, that Convict Gurmej Singh transferred from the UK to India under the Indo-UK Agreement on transfer letter no 7255 dated 31.07.2020 cannot be granted parole until he is shifted to open jail. So in reference to the abovementioned case, the Superintendent jail has rejected the petitioner's application for regular parole, that he will also be granted parole when he is shifted to an open prison.”

3. *Along with the present petition, the petitioner has placed on record a judgment dated 11.04.2023 passed in CRWP No.8025 of 2021 titled ‘Azad Singh vs. The State of Punjab & Others’ wherein the petitioner was previously granted emergency parole for two weeks though a similar objection was raised at the instance the respondents.*

4. *It appears that respondent No.3 did not even care to consider the judgment dated 11.04.2023 passed by this Court under similar circumstances and, thus, has compelled the petitioner to approach this Court again in direct violation of the said judgment which was even inter se parties.*

5. *Notice of motion for 09.04.2024.*

6. *Upon advance notice, Mr. Siddharth Sandhu, Asstt. A.G., Punjab appears and accepts notice on behalf of respondent Nos.1 to 3. Mr. Dharam Chand Mittal, Senior Panel Counsel for Union of India appears on behalf of respondent No.4.*

7. *Respondent No.3 is also put to show cause notice as to why proceedings be not initiated against him for showing willful*

disrespect towards the judgment dated 11.04.2023 passed by this Court. Respondent No.3 is also directed to remain present before this Court on the date fixed i.e. tomorrow.”

In pursuance thereof, the District Magistrate, Fatehgarh Sahib as well as the Superintendent, Central Jail, Patiala appeared before this Court and informed that in view of restriction on release of jail inmates on parole during the Model Code of Conduct issued by the Election Commission of India, in terms of letter dated 10.04.2018, the petitioner could not be granted the benefit.

3. Faced with this, on 02.05.2024, the following order was passed:-

“Learned State counsel seeks time to apprise the Court as to whether any parole under the provision of The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 has been granted in favour of any convict/jail inmate in the past 05 years during the period when Model Code of Conduct in view of Election was in place. Necessary record being maintained regarding grant of parole for the aforementioned specific period be also produced.

List on 03.05.2024.”

Thereafter, on 03.05.2024, the office of District Magistrate, Fatehgarh Sahib provided the list of 4/5 jail convicts, who were granted emergency parole during the Model Code of Conduct relating to the last parliamentary election as well as the legislative assembly election in the State of Punjab and as such on 03.05.2024, the following order was passed:-

*“Pursuant to previous order dated 02.05.2024, learned State Counsel informs that during General Lok Sabha Elections-2019, parole was granted to four (04) jail inmates. In this regard, learned State Counsel relies upon an undated communication received from the office of District Magistrate, Fatehgarh Sahib, the same is taken on record as **Mark-X**;*

Registry to tag / paginate the same at appropriate place in the paper-book.

The aforesaid information shows that an exception has been carved out selectively, which is evidently discriminatory. A cumulative analysis of the circumstances pertaining to the case in hand reflects that the petitioner is being unnecessarily harassed for no reasons as the authorities concerned have failed to exercise the jurisdiction vested in them.

Learned State Counsel prays for a day's time to responded in the matter.

*List on **07.05.2024**.*

Respondent Nos. 1 to 3-State of Punjab are put to show cause as to why costs of Rs. 5 lakhs be not imposed upon in this case for creating hurdles in the apparent justifiable cause put forth by the petitioner and also for compelling him to approach this Court for no justified reasons and only because of inaction on the part of respondents.”

4. Today, an affidavit dated 07.05.2024 of Mr. Manjit Singh Sidhu, Superintendent, Central Jail, Patiala on behalf of respondents-State has been filed in Court today, wherein, it has been stated that the petitioner has been allowed emergency parole for a period of two weeks and has been released from Central Jail on 06.05.2024 with the direction to surrender on 21.05.2024. The relevant paragraph of the said affidavit is reproduced hereunder:-

“4. That it is further humbly submitted that the parole case of the petitioner has been allowed by the respondent No.2 vide their letter No/727-29/Peshi-1 dated 04.05.2024 and further in compliance of the release warrants issued in reference to the above state release orders, the petitioner has been released for a period of 02 weeks from Central Jail Patiala on 06.05.2024 and the petitioner has been directed to surrender at Central Jail

Patiala on 21.05.2024 after the completion of his parole. Copy of the above stated order is annexed herewith as Annexure R-1.”

5. From the facts and circumstances narrated above as well as perusal of the case file, it is apparent that the conduct of the official-respondents has not been fair either to the Court or even to the petitioner, who is repeatedly compelled to approach this Court just for grant of benefit of parole, though the same is part of his statutory rights flowing from the provisions of 1962 Act, besides forming part of the statutory functions vested with the official respondents. The record further shows that no document what so ever has been brought to the notice of this Court, which absolutely prohibits grant of parole when Model Code of Conduct is in force. Besides it, the rights of convict for parole during the Model Code of Conduct have already been exposted by this Court vide decision dated 28.03.2019 passed in CWP-7732-2019, titled as ***“Banti vs. State of Haryana and others”***.

6. Keeping in view the above, I am of the considered opinion that the order dated 15.03.2024, is not legally sustainable and is accordingly set aside.

7. Consequently, the petition is allowed and petitioner-Azad Singh is granted the parole for a period of 06 weeks w.e.f. 06.05.2024, including two weeks' parole already granted vide order dated 04.05.2024 passed by learned District Magistrate, Fatehgarh Sahib (during the pendency of present petition), subject to the condition that he would report to the Station House Officer of the concerned Police Station once in every week on Monday. The petitioner is further directed to surrender before the Central Jail Patiala on

18.06.2024.

8. In the present case, the official respondents have failed to perform their statutory obligations, compelling the convict/individual to approach this Court just for the purpose of availing the statutory rights of release on parole, causing unnecessary litigation before this Court, which is already burdened. Additionally, not only previous judgments of this Court on the same point of law have been blatantly ignored but unacceptable excuses were provided to justify the undeniable. In view of the same, the erring officer (respondent No.2) is burdened with costs of Rs.50,000/-.

9. Pending application(s), if any also stand(s) disposed of.

07.05.2024

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(HARKESH MANUJA)
JUDGE

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