

IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH.

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CWP-17545-2021 (O&M).  
Date of Decision: 14.03.2024.

RAJIV KUMAR AND ANOTHER

... Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: None for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana,  
for the respondents.

**VINOD S. BHARDWAJ, J. (ORAL)**

Prayer in the present writ petition is for quashing of the impugned order dated 16.06.2021 (Annexure P-6) passed by respondent No.2-District Collector, Ambala, Haryana whereby forfeiture of the surety bond of Rs.1 Lakh each executed by the petitioners regarding the release of convict Vikas Manchanda on special parole has been ordered.

2 A perusal of the order sheets shows that there is no representation on behalf of the petitioner for the last two dates in succession, therefore, this Court is not inclined to adjourn the case

repeatedly for non-appearance on behalf of the petitioners. Hence, Dr. Malvika Singh, Advocate, is hereby appointed as legal-aid-counsel to assist this Court on behalf of the petitioners.

3           The learned Legal-aid-counsel has gone through the paper book and has vehemently argued that one Vikas Manchanda son of Purshottam Dass, resident of House No.1486/87, Sikligarh Mohalla, Police Station Ambala Cantt. was convicted in case FIR No.258 dated 01.09.2009 registered at Police Station Amabala Cantt. and sentenced to undergo imprisonment for life.

4           The said convict had availed the benefit of parole/furlough for 10 times prior to March, 2020. There was no default or violation of the terms and conditions of the parole by the said convict. Due to spread of pandemic Covid - 2019 globally during the month of March, 2020, a High Powered Committee was constituted under the Chairmanship of Hon'ble Mr. Justice Rajiv Sharma, Judge of this Court-cum-Executive Chairman, the Haryana State Legal Services Authority for effecting implementation of the directions dated 23.03.2020 passed by the Hon'ble Supreme Court of India in the **Suo Moto Writ petition (Civil) No.01 of 2020**. The High Powered Committee directed for release of convicts on special parole for a period of six weeks which was extendable upto 08 weeks if the circumstances so demanded.

5           In view of the said recommendations given by the High Powered Committee in its minutes of meeting held on 24.03.2020, the convict Vikas Manchanda was found entitled to the benefit of special parole in view of Section 10 (2) (a) & (b) of the Haryana Good Conduct Prisoners

(Temporary Release) Act, 1988 read with Rule 11 (2) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Rules 2007. The petitioners furnished surety for the said convict namely Vikas Manchanda for a sum of Rs.1 Lakh each and the details of the surety bond furnished by the petitioners is extracted as under:-

| <i>Name</i>        | <i>Bank (Branch)</i>                           | <i>FDR Number and amount</i>                            |
|--------------------|------------------------------------------------|---------------------------------------------------------|
| <i>Rajiv Kumar</i> | <i>Axis Bank, Mahesh Nagar, Ambala Cantt.</i>  | <i>FDR No.920040012364395 of an amount of Rs.1 Lakh</i> |
| <i>Vivek Tuli</i>  | <i>ICICI Bank, Mahesh Nagar, Ambala Cantt.</i> | <i>FDR No.139810000488 for an amount of Rs.1 Lakh.</i>  |

6            Learned legal-aid-counsel for the petitioners contends that after furnishing of surety by the petitioners, Vikas Manchanda convict was released from Central Jail, Ambala, on 03.04.2020. However, during the period of above said special parole, Vikas Manchanda was arrayed as an accused in FIR No.249 dated 08.06.2020, under Section 148, 149, 188, 323, 341, 307, 364-A, 511, 395, 397, 506 and 120-B of the Indian Penal Code, 1860 and Section 25 of the Arms Act registered at Police Station, Ambala Cantt. along with certain other accused person. He was arrested by the police on 29.06.2020 before the expiry of the period of special parole.

7            It is stated that the convict Vikas Manchanda was not present at the place of occurrence and the only role attributed to Vikas Manchanda was that the car used in the crime was seen parked near his house. Statement of one Sunil Dutt son of Tomar Singh was recorded in this regard. However, the said Sunil Dutt later realized his mistake regarding the

attribution of role against the convict Vikas Manchanda in the above said FIR and executed an affidavit on 06.07.2020 whereby he stated that the name of Vikas Manchanda was got recorded due to some misunderstanding and he is satisfied that Vikas Manchanda had no involvement in the said matter. Thereafter, the regular bail was granted to Vikas Manchanda convict vide order 27.08.2020 by the Additional Sessions Judge, Ambala. The above said fact was also noticed by the learned Sessions Judge, Ambala while granting bail. Additionally, the convict had approached this Court vide CRM-M-26988 of 2020 for seeking quashing of the FIR as well as the other consequential proceedings arising therefrom qua him. It was also pointed out that the convict Vikas Manchanda could not surrender on expiry of the period of special parole on account of having been arrested by the police on 09.06.2020 and therefore, he was not voluntarily absconding. She contends that the issue as regards the competence of the State to direct forfeiture of the surety has already been decided by this Court in the matter of **Deepak Vs. State of Haryana and others, bearing CWP No.25735 of 2019 decided on 06.12.2022 along with another CWP No.26335 of 2019, titled as 'Sanjay Vs. State of Haryana and others.'** She submits that under the given circumstances, the Jail Superintendent was competent to impose punishment on a convict in an eventuality where the convict has abused the parole and/or has violated any terms and conditions thereof, however, the direction for forfeiture of the surety could not have been issued.

8            Learned State counsel for the respondents, however, contends that the surety in question had been submitted by the petitioners, wherein they had bound themselves for the conduct of the convict and had also

undertaken that the convict will surrender in time. He submits that involvement in the criminal case is an act which is solely attributable to convict Vikas Manchanda and not on account of any *force majeure* event or circumstances beyond his control. Hence, he cannot take advantage of his mis-conduct for avoiding the consequential action of violation of terms and conditions of the parole. He, however, is not in a position to dispute that in relation to the issue of forfeiture, a judgment in the matter of **Deepak Vs. State of Haryana and others** (supra) has already been passed by this Court as per which the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Rules 2007, do not stipulate conferring any jurisdiction of forfeiture of the surety bond.

9            In view of the undisputed position as above, since the issue of competence of the respondents to direct forfeiture has been decided against the concerned authority (for want of statutory competence and authority) the present writ petition is allowed.

10           The impugned order dated 16.06.2021 (Annexure P-6) passed by respondent No.2 ordering forfeiture of the surety bond of Rs.1 Lakh each executed by the petitioners is set aside. The competent authority shall, however, be at liberty to take appropriate action/decision against the convict in the manner known to law.

March 14, 2024.  
raj arora

(VINOD S. BHARDWAJ  
JUDGE

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