

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

CRWP-6867-2023

Date of Decision: 23.01.2024

Mandep @ Motha

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI**

Present: Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

AMARJOT BHATTI, J.

1. Present criminal writ petition has been filed under Article 226/227 of the Constitution of India read with provisions of The Haryana Good Conduct Prisoners (Temporary Release) Act for issuance of writ in nature of Certiorari to quash impugned order dated 03/05.06.2023 (Annexure P-1) passed by respondent No. 2 whereby the application for grant of concession of parole has not been recommended.

2. Present petitioner is convicted on 02.07.2018 in FIR No. 56 dated 21.02.2014 under Sections 302 and 120-B of Indian Penal Code, 1860 (for short 'IPC') and under Section 25 of Arms Act, registered at Police Station Tosham, District Bhiwani and was sentenced as under :-

Offence U/s	Sentence of Imprisonment	In default of payment of fine
302 read with Section 120-B of IPC	Rigorous imprisonment for life and fine of Rs. 2,00,000/-	Simple imprisonment for six months
25 of Arms Act	Rigorous imprisonment for two years and fine of Rs. 10,000/-	Simple imprisonment for one month

3. Petitioner had filed application for grant of parole to meet his family members which was earlier declined vide order dated 10/13.03.2023 by Divisional Commissioner Karnal Division Karnal. Copy of order is Annexure P-2. Thereafter, he had approached this Court by filing Criminal Writ Petition No. 4379 of 2023, decided on 08.05.2023 (Annexure P-4) vide which order dated 10/13.03.2023 was set aside with direction to competent authority to reconsider the matter and to decide the same expeditiously and preferably within a period of four weeks from receipt of certified copy of order. Thereafter, his application for grant of parole has been again declined by passing impugned order dated 03/05.06.2023, Annexure P-1.

4. It is further pointed out that even earlier in the aforesaid FIR, present petitioner was granted furlough for a period of two weeks in Criminal Writ Petition No.8913 of 2022, decided on 14.11.2022, Annexure P-3. Apart from the aforesaid criminal writ petition, he has not filed any other criminal writ petition before this Court or Hon'ble The Supreme Court of India. As per custody certificate, there is reference of 11 cases registered against him. It is further pointed out that petitioner has undergone actual custody of more than 9 years. He has never been declared proclaimed offender in any of the case. It was submitted that impugned order dated 03/05.06.2023, Annexure P-1 passed by respondent No. 2 may kindly be set aside and he may be granted parole of ten weeks to meet his

family members.

5. Custody certificate dated 22.01.2024 filed by learned counsel for State, is taken on record, subject to just exceptions.

6. Heard.

7. It is a matter of record that vide order dated 08.05.2023 passed in CRWP No.4379 of 2023 filed by petitioner, earlier order dated 10/13.03.2023 declining benefit of parole to petitioner, had been set aside by this Court and competent authority was directed to reconsider the matter while observing as under:-

“8. It is relevant to refer to Section 8 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (for short, '2022 Act'), which reads as under:-

“8. Notwithstanding anything contained in this Act, no convicted prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate or the Deputy Commissioner of Police or the Superintendent of Police or otherwise, the State Government or the competent authority is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace.”

9. It has been held in a plethora of cases that temporary release of a prisoner on parole or furlough can be denied only if such release is likely to endanger security of State or maintenance of public order. For arriving at such satisfaction that danger to security of State or maintenance of public order is indeed present, there has to be sufficient material before the District Magistrate for consideration. In the present case, there are general allegations that petitioner may abscond or involve in other criminal case, if released on parole. However, no material has been adverted to in the reply or by learned State counsel during the course of arguments justifying such apprehension. Insofar as other cases against the petitioner are concerned, it is not denied that in almost all of them, petitioner has either been acquitted or has undergone the sentence. Furthermore, no provision of 2022 Act has been cited which can be a

bar/impediment for release of the petitioner on parole.

10. In our considered opinion, reasons for declining parole to the petitioner in the facts and circumstances of the case are unsustainable. The present case calls for reconsideration of the matter by the competent authority in accordance with law and parameters as laid down for grant of parole.”

8. We have perused impugned order dated 03/05.06.2023 passed by Divisional Commissioner Karnal Division Karnal, Annexure P1 vide which petitioner’s application seeking parole has been rejected while referring to twelve cases registered against him and holding that there is apprehension that prisoner may commit a cognizable offence during parole or he may harm the victim’s family. It was further observed that possibility of non-appearance of prisoner after the expiry of parole cannot be ruled out and on that basis it was observed that present petitioner is not eligible for parole.

9. It is apparent that impugned order was passed by Divisional Commissioner, Karnal Division, Karnal in routine and mechanical manner without inadvertence to the provisions of law or even specifically Section 8 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022. We note with great anguish that this is so despite order dated 08.05.2023 in CRWP No.4379 of 2023 passed by us. Perusal of impugned order dated 03/05.06.2023 (Annexure P1) reveals that first and foremost, there is no satisfaction recorded by the competent authority that release of petitioner is likely to endanger security of the State or maintenance of public order or cause reasonable apprehension of breach of peace. Furthermore, there is no such material referred to which would cause such a satisfaction. General allegations that petitioner may abscond or may involve in other criminal cases if released on parole, are taken note of in a casual manner. Though

the long list of FIRs in which petitioner is stated to have been involved is reflected in order dated 03/05.06.2023, but it is a matter of record that in a number of these cases, petitioner has either been acquitted or sentenced imposed stands undergone. It is affirmed that petitioner's family consists of his parents, an elder brother alongwith a married sister. Case for grant of parole for ten weeks was duly initiated by Superintendent, District Jail, Karnal alongwith his recommendation.

10. Divisional Commissioner, Karnal Division, Karnal while passing the aforesaid impugned order failed to consider that petitioner was granted concession of furlough for a period of two weeks as per order dated 14.11.2022, Annexure P-3 and he had surrendered on time. There is no denial of this fact. As per custody certificate, he has undergone actual period of custody for 09 years 10 months and 10 days.

11. Division Bench of this Court in **Arun Kumar vs. State of U.T., Chandigarh and others, 2011 (2) AICLR 361** held that release of convict on parole is a part of reformatory process. Provisions of the Act have been enacted as a reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Sufficient material should be available and there should be solid reasons for declining temporary release on parole. Similarly, in **Ram Chander vs. State of Punjab and others, 2017 (3) RCR (Crl.) 340**, it was held that in the absence of any material before the District Magistrate, denial of benefit of parole for meeting the family members as such would not be justified.

12. Learned counsel for the State is unable to point out any material on record which can lead to satisfaction that release of petitioner

may endanger security of the State or maintenance of public order or cause reasonable apprehension of breach of peace. No such impediment has been referred to which calls for denial of benefit of parole to petitioner.

13. Therefore, considering the previous conduct of present petitioner and the aforesaid facts, impugned order dated 03/05.06.2023 (Annexure P-1) passed by Divisional Commissioner Karnal Division Karnal is not justified.

14. This criminal writ petition is accordingly allowed and impugned order dated 03/05.06.2023 passed by Divisional Commissioner Karnal Division Karnal is set aside. Petitioner is directed to be released on parole for a period of four weeks from the date of his release subject to his furnishing requisite and adequate surety bonds in terms of statutory provisions to the satisfaction of competent authority who would also impose requisite conditions to ensure that temporary release is not misused.

15. Petitioner shall undertake to maintain peace and good behaviour during this period. He shall surrender back to jail after expiry of parole period.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

23.01.2024
lalit/om

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