

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

CRWP-9525-2023 (O&M)

Date of Decision: 19.04.2024

INDER SINGH

.....PETITIONER

Vs.

STATE OF U.T. CHANDIGARH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Hoshiar Singh Jaswal, Advocate,
 for the petitioner.

Mr. J.S.Toor, A.P.P. for U.T., Chandigarh.

HARPREET KAUR JEEWAN J.

1. The present petition has been filed under Article 226 of the Constitution of India for issuance of a direction to the respondents to release the petitioner on parole by setting aside the impugned order dated 29.08.2023 (Annexure P-1), passed by the Inspector General of Prisons, U.T., Chandigarh (respondent No. 1).

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been convicted and is undergoing sentence as awarded by the learned Additional Sessions Judge, Chandigarh, for rigorous imprisonment of 10 years under Section 376 (1) of the IPC, as per the judgment and order dated 13.03.2023 and 14.03.2023, respectively.

3. The petitioner has challenged the order of conviction and sentence by way of filing Criminal Appeal No. **CRA-1082-SB-2023**, which stands admitted for regular hearing, vide order dated 17.04.2023 and is pending before this Court. The application moved by the petitioner to

respondents No. 1 to 3 for releasing the petitioner on parole has been dismissed by the Inspector General of Prisons, U.T., Chandigarh (respondent No. 1) by passing the impugned order, dated 29.08.2023 (Annexure P-1) on the basis of the report of the District Magistrate, Ayodhya (U.P.) (respondent No. 3). Reliance has been placed upon the decision dated 09.04.2024 passed by the Division Bench of this Court in CRWP-2249-2024, titled *“Rananjay Singh vs. State of U.T., Chandigarh and others”*.

4. A report dated, 19.04.2023, of the District Magistrate, Ayodhya as Annexure R-1 has been filed in Court today by learned counsel for the U.T., Chandigarh. The same is taken on record.

5. Custody certificate, dated 19.04.2023, of the applicant-appellant showing total sentence including remission of 01 year, 08 months and 01 day, out of 10 years, has also been filed in Court today by counsel for the U.T., Chandigarh. The same is taken on record.

6. Learned counsel for the U.T., Chandigarh has opposed the present petition, on the ground that the report by the District Magistrate, Ayodhya (respondent No. 3) was not favourable to the petitioner, as such, parole has not been allowed to the petitioner since the petitioner is the resident of the said place.

7. I have considered the aforesaid contentions and perused the paper-book.

8. As per the custody certificate, the petitioner had undergone total sentence of 01 year, 08 months and 01 day, out of 10 years under Section 376 (1) of the IPC. After the conviction, he has undergone more than a period of 01 year and 01 month w.e.f. 14.03.2023. The reasons recorded by the

Inspector General of Prisons, U.T., Chandigarh, for dismissal of the application for grant of parole reads as under:-

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*“The District Magistrate, Ayodhya (U.P) sent a report vide letter No. 1058-59, dated 17.08.2023 and he did not recommend the parole of convict **Inderjeet Yadav @ Arjun** on the basis of the report of the Senior Superintendent of Police, Ayodhya (U.P.)*

*The District Magistrate, Ayodhya, U.P. has not recommended the 25 days parole of the convict **Inderjeet Yadav @ Arjun, son of Gagan Ram Yadav**, on the basis of the report of the Senior Superintendent of Police, Ayodhya, U.P. who revealed that there is danger to the state security, if the convict is released on parole. The grounds mentioned in the parole application by the prisoner for availing his parole is incorrect.*

*Keeping in mind the report of the District Magistrate, Ayodhya (U.P.) and provision of the aforesaid Act, the undersigned is of the view that convict **Inderjeet Yadav @ Arjun son of Ganga Ram Yadav** is not entitled to be released on parole. Thus, the parole case of convict **Inderjeet Yadav @ Arjun son of Ganga Ram Yadav** is hereby rejected.”*

9. As per the report of the District Magistrate, Ayodhya (Annexure R-1) the following reasons have been mentioned while opposing the releasing of parole of 28 days to the petitioner:-

*“Giving parole to the prisoner **Inderjeet Yadav alias Arjun** is dangerous for law and order situation of the State and can cause adverse affect on the*

maintenance of law and order and the same should cause adverse effect. Address provided by the prisoner Inderjeet Yadav alias Arjun is correct and is certified/verified by the Councilor.”

10. The reasons recorded by the District Magistrate, Ayodhya (respondent No. 3) does not refer about his opinion based on the application of his free, independent and judicious mind regarding relevant statutory provisions. No facts or relevant information has been processed before observing that releasing the petitioner on parole would be dangerous to the law and order situation of the State and would cause adverse affect on the maintenance of law and order. Though the address given by the petitioner was found to be correct and it was mentioned that the petitioner was running a computer institute at the given address and also mentioned that prisoner wants time for management of the said institute, however, it has been mentioned in the report that the grounds for parole are not correct. The said report is apparently a stereo type report.

11. The temporary release of prisoners is dealt under the provisions of “The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962”. Section 3 of the said Act deals with various contingencies upon which a prisoner can be temporarily released while undergone sentence. The said Section is reproduced as under:-

“3. Temporary release of prisoners on certain grounds:-

(1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoners if the State Government is satisfied that-

- (a) A member of the prisoner's family has died; or*
- (aa) husband of wife or son or daughter or mother or brother or*

sister or grand-father of grant-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or

(b) the marriage of the prisoners son or daughter is to be celebrated; or

(c) the temporary release of the prisoners is necessary for ploughing, sowing of harvesting or carrying on any other agricultural operation, on his land or any other land cultivated by him and no friend of the prisoner or a member of the prisoners family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant or is likely to deliver a child; or

(d) It is desirable so to do for any other sufficient cause

[Explanation:- The expression “sufficient cause” includes-

(1) Serious damage to life property of the member of the family caused by any natural calamity; or

(2) Critical condition of any member of the family on account of accident; or

(3) Delivery of child by the wife of the prisoner.]

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), fifteen days;

(b) where the prisoner is to be released on the ground specified in clause (aa) or clause (b) of clause (c) or clause (d) of sub-section (1), eight weeks; and

(c) where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days) prior to the date of delivery of child and sixty days after delivery of child.

2-A *The total period of temporary release of the prisoner, excluding the release availed of,-*

i. On the death of a family member of the prisoner; or

ii. By a female prisoner on account of delivery of child, as the case may be shall not exceed sixteen weeks, during a calendar year and shall be availed on quarterly basis:

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a one time measure on prodata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is own temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so:

Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases Act, 1897, the State Government may, by a special notification published in the official gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis.

(3) The period of release under this Section shall not count towards the total period of the sentence of the prisoner.

(4) The State Government may by notification authorize any officer to exercise its power under this Section in respect of all or any of the grounds specified therein.”

12. The provisions of parole and furlough are based on humanistic approach and while dealing with the said provisions, the Hon'ble Apex Court in **Asfaq vs. State of Rajasthan and others** 2017 (15) SCC 55 held as under:-

“15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly

higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.”

13. Keeping in view the above, I am of the considered opinion that the impugned order dated 29.08.2023 (Annexure P-1) passed by the

Inspector General of Prisons, U.T., Chandigarh (respondent No. 1) is legally not sustainable and is accordingly set aside.

14 Consequently, the present petition is allowed. The impugned order dated 29.08.2023 (Annexure P-1) passed by the Inspector General of Prisons, U.T., Chandigarh (respondent No. 1) is set aside. A direction is given to he Inspector General of Prisons, U.T., Chandigarh (respondent No. 1) to reconsider the case of the petitioner for grant of parole. The exercise be completed within four months after receipt of the certified copy of this order.

15. Pending miscellaneous application (s), if any, shall also stand disposed of.

April 19, 2024

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(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking

Whether reportable

Yes

No