

In the High Court of Punjab and Haryana at Chandigarh

(207)

**CRWP No.12528 of 2023
Date of Decision: 19.04.2024**

Kuldeep @ Manga

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Randeep S. Dhull, Advocate for the petitioner.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner became tried, besides became convicted, by the learned Sessions Judge, Ambala, in respect of the charges which became framed respectively, in FIR No.98/2010, lodged under Sections 120-B, 186, 302, 307, 332, 353 read with Section 34 IPC and Section 25 of Arms Act; in FIR No.167/2004, lodged under Sections 380 and 457 IPC, registered at Police Station Mulana, District Ambala, and, in FIR No.127/2010, lodged under Sections 307, 412, 420, 467, 468, 471 read with Section 34 IPC, registered at Police Station Sadar, Ambala.

2. In pursuance of the said made verdicts of conviction by the learned Sessions Judge, Ambala, thus consequent thereto substantive sentences of imprisonment also became imposed upon the present petitioner. The present petitioner is serving the said imposed substantive sentences of imprisonment in District Jail, Bhiwani.

3. Though, against the verdicts of conviction and consequent thereto substantive sentences of imprisonment which became imposed,

upon, the petitioner/convict, by the learned Sessions Judge, Ambala, in respect of the FIRs supra, the petitioner/convict has filed appeals there-against before this Court. However, during the term of his serving sentences in District Jail, Bhiwani, he had moved an application under Section 3 of the Haryana Good Conduct Prisoner (Temporary Release), Act, 1988, whereby, he claimed that he be granted parole for a period of 10 weeks, so as to enable him, to meet his family members.

4. On the said application, the impugned Annexure P-1 became drawn. The drawing of Annexure P-1 denied relief to the petitioner and thereby leads him to file the instant Criminal Writ Petition before this Court.

5. To determine the validity of impugned Annexure P-1, it is deemed imperative to extract the reasons which were borne in mind by the Authority which made it. The said reasons are reproduced hereinafter:-

“District Magistrate, Panchkula by issued from their office letter No.1741/Peshi dated 20.10.2023 has iterated that in relation to the above mentioned case, a report has been obtained by Deputy Superintendent of Police, Panchkula vide letter No.98836 dated 06.10.2023 investigation of which was done by Assistant Commissioner of Police, Zone- 3, Panchkula through means of Station House Officer, Police Station Chandi Mandir, Panchkula. During proceedings, it was found that the prisoner Kuldeep Singh alias Manga son of Baldev Singh was resident of village Manakya, Panchkula. Prisoner has been undergoing sentence for the past 11 years in FIR No.98/2010 U/s 302, 307, 332, 353, 186, 120-B, 34 of IPC and 25, 54, 59 of Arms Act, FIR No.167/2004 U/s 457, 380 IPC at P.S. Mulana, District Ambala and FIR No.127/2010 U/s 307, 420, 467, 468, 471, 412, 34 of IPC at P.S. Sadar Ambala, Ambala in District Jail, Karnal for the life imprisonment sentence. Accused Kuldeep Singh alias Manga has once again under the provision of

Section 3 of Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 applied for the leave of 10 weeks regular parole to come to his house. There is provision to the prisoner of meeting with the family members in the jail. Besides this, there are various other culpable criminal cases registered against the prisoner Kuldeep Singh alias Manga and he is a habitual offender. On the event of granting parole time and against to the prisoner he can jump the parole and can commit some other heinous crime. In case the prisoner does not surrender back to jail after availing his parole leave, then there arises threat to the security of the state. Therefore, in view of the investigation conducted by the Assistant Commissioner of Police, Panchkula by means of Station House Officer, Chandi Mandir, Panchkula the local police does not recommend freeing the prisoner Kuldeep Singh alias Manga on leave of parole.”

6. A reading of the above extracted paragraph which reveals therein, thus, the purported well-informed reasons which prevailed over the authority concerned, thus to make a declining order on the parole application, however, discloses that the said reasons are completely mis-founded and besides are ill-informed reasons.

7. The reason(s) for making the said conclusion, is/are, that though the present petitioner, prior to the institution of present application before the competent authority, had instituted an application for parole, thus before the competent authority. The said application became rejected, leading the petitioner to earlier institute CRWP No.7702 of 2023 before this Court.

8. The said Criminal Writ Petition was allowed but the reasons which earlier prevailed upon this Court to allow the writ petition supra are extracted hereinafter:-

“Previously, the petitioner had availed parole of four

weeks w.e.f. 29.11.2021 for house repair. After availing parole, petitioner had surrendered in time on due date. Thereafter, the petitioner has also availed three weeks furlough w.e.f. 08.08.2022 till 30.08.2022. After completing the period of furlough successfully, the petitioner surrendered on due date. The factum of aforesaid parole/furlough has also been recorded in the impugned order, but the present prayer has been dismissed solely on the ground of antecedent behaviour of the criminal activity of the petitioner which was there in existence at the time of previous availing parole/furlough.

Perusal of reply by way of affidavit of Mr. Amit Kumar, Superintendent of Prison, District Prison, Karnal has not pointed out any such glaring fact which would dis-entitle the petitioner from availing his legal right.

The Hon'ble Apex Court in **Asfaq vs State of Rajasthan and others, 2017(15) SCC 55** has dealt with the issue of parole/furlough and has held that a humanistic approach is required to be adopted while deciding these cases. There is no mis-conduct exhibited by the petitioner during the period for which the earlier parole and furlough were granted to him.

Having considered the pleadings of the petitioner and the defence taken by the respondent, we deem it appropriate to set aside the impugned order dated 21.06.2023 passed by the respondent No.2 and direct the competent authority to pass fresh order in the light of observations made by the Hon'ble Apex Court in **Asfaq's case (supra)** within a period of one month from the date of receipt of certified copy of this order. Disposed of."

Therefore, it appears that the authority concerned without making a keen and incisive application of mind, to the relevant regulations, rather had chosen to adopt ill-informed, pretextual and conjectural premises, and, thus had taken to decline the espoused parole to the present

petitioner/convict, despite the fact that the earlier availed furlough/parole by the present petitioner/convict, never became abused by him. Resultantly, thereby, it was not required to be concluded by the competent authority that there is every possibility of the present petitioner/convict, thus abusing the furlough/parole as became ultimately granted to him, imperatively when the earlier availed facility, rather never became abused by him.

9. In sequel, for the reasons supra set-forth in Annexure P-2, this Court, became led to, earlier quash the declining order, as became passed on the parole application preferred by the present petitioner/convict, before the competent authority. Therefore, when the very same reasons which became earlier frowned upon or became discountenanced, rather are repeated in the impugned declining order. Resultantly, it appears that the competent authority, has in a most slipshod and brazen manner, and, but without scrutinizing the earlier reasons made by this Court, whereby this Court was led to interfere with the declining order as became earlier passed by the competent authority, rather has chosen to yet make the but obvious ill-informed impugned Annexure P-1.

10. In consequence, upon finding merit in the instant petition, the same is allowed and the petitioner/convict – Kuldeep @ Manga, is ordered to be released forthwith on parole, for a period of four weeks, from the prison concerned, but subject to his furnishing personal and surety bonds in a sum of Rs. One Lakh each, and, to the satisfaction of the Superintendent of Jail concerned, where he is extantly lodged, and, with an undertaking therein that immediately on expiry of the afore period, he shall re-step into the prison concerned. In case the said personal and surety bonds are tendered, before the Superintendent of the jail concerned, and if becomes so satisfied

therefrom, he shall accept and attest the same. The stepping outside the prison of the convict-petitioner shall commence in the evening of 20.04.2024, and, shall last uptill the morning of 18.05.2024.

11. If the above condition is breached, and, the petitioner does not re-step into the prison concerned, rather immediately on the expiry of the above period, i.e. on 18.05.2024, thereupon, liberty is reserved to the jurisdictional SHO concerned, to forthwith arrest the petitioner, and, to thereafter produce him before the jurisdictional Magistrate concerned, for the latter making an order for the petitioner becoming committed to the prison concerned. Furthermore, the present petitioner/convict is directed to surrender all the arms licences, and, also all the fire-arms which become there-unders, issued to him, thus, before the jurisdictional SHO concerned. He is also directed to, every week, record his presence before the jurisdictional SHO concerned.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 19, 2024
d.gulati

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