



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

CRWP-5866-2024

Date of decision: 01.01.2025

SUBHASH

... PETITIONER

V/s

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Harshita Kalra, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

SUMEET GOEL, J.

1. The present criminal writ petition challenges the impugned order dated 07.05.2024, passed by the Divisional Commissioner, Rohtak Division, Rohtak, which rejected the petitioner's request for release on parole.

2. The petitioner is a convict in the offence arising out of FIR No. 458 dated 20.11.1997, registered at Police Station Jhajjar, District Jhajjar, under Sections 302 and 498-A of the Indian Penal Code. After his conviction under Sections 302 and 498-A of the IPC by the trial Court, he preferred a Criminal Appeal bearing No. CRA-D-253-DB-2001 before this Court. In the appeal, his conviction under Section 498-A was set aside, whereas his conviction under Section



302 of the IPC was upheld. As such, he is undergoing life imprisonment under Section 302 of the IPC.

3. Earlier, the petitioner was granted two weeks of parole on 25.06.2001 with a direction to surrender at the jail gate on 10.07.2001. However, the petitioner jumped the said parole and did not surrender after his release on parole. He was later arrested by the police and lodged in jail on 14.04.2015. As such, he remained an absconder for a period of 13 years, 9 months, and 4 days. A separate FIR in that regard was lodged against the petitioner, bearing FIR No. 424 dated 30.07.2001, under Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022, at Police Station Civil Lines Rohtak. The petitioner was convicted in that case and sentenced to the imprisonment already undergone by the Court of Chief Judicial Magistrate, Rohtak, on 04.11.2015.

4. Thereafter, the petitioner is stated to have applied for the grant of parole/furlough, which was sanctioned for three weeks vide order No. Parole/2098-2100 dated 10.03.2022. However, he was not released on furlough as his surety bonds were not accepted by the office of the S.D.M., Najafgarh, Delhi. The petitioner filed a Criminal Writ Petition against the non-acceptance of his bail bonds vide CRWP No. 7775 of 2022, but the same was dismissed as withdrawn vide order dated 21.02.2023 with liberty to the petitioner to approach the authorities as per law.

5. The petitioner then applied for the grant of 10 weeks of regular parole to the Superintendent, District Jail, Rohtak. The same was sent to the District Magistrate, Rohtak for his report on



27.04.2023, with a copy to the Commissioner, Rohtak Division, Rohtak, who is the competent authority to grant parole to the petitioner. Vide the impugned order dated 07.05.2024, passed by the Divisional Commissioner, Rohtak Division, Rohtak, the request for grant of parole made by the petitioner was declined.

6. Perusal of the impugned order shows that the Divisional Commissioner, being the competent authority, relied upon the reports submitted by the District Magistrate, Rohtak. The factors mentioned in the impugned order, which influenced the competent authority, include the District Magistrate's decision not to recommend the release of the prisoner on parole based on the report from the Superintendent of Police, Rohtak. According to the report from the Superintendent of Police, Rohtak, the prisoner's family consists of his wife and children, who are capable of visiting the jail to meet the petitioner. The petitioner is guilty of a heinous crime, and while on parole, he could potentially commit a similar offence. Due to this, there is a danger to public order and the possibility of disturbance of peace in the village. Additionally, the petitioner may jump parole as he previously absconded for about 14 years.

7. I have heard the learned counsel for the parties and have gone through the record of the case carefully.

8. It is argued on behalf of the petitioner that the request of the petitioner has been wrongly declined vide the impugned order. The release of the petitioner on parole does not in any manner impact peace in the village. In this regard, reliance is placed on Annexure P-



1, the certificate issued by the Sarpanch of the Gram Panchayat of the petitioner's village.

9. To the contrary, on behalf of the State, it is argued that the petitioner, in view of his past conduct, is not entitled to the grant of parole and is likely to abscond again. Accordingly, dismissal of the petition is prayed for.

10. Perusal of the impugned order makes it abundantly clear that the competent authority has relied upon the circumstance that the release of the petitioner on parole is likely to cause a breach of peace in society, as he, being convicted of a heinous crime (murder), can carry out such an offence again while on parole. The finding in this regard by the competent authority is ill-founded and cannot be sustained for the simple reason that no tangible material in support of such an apprehension has been put forth for the scrutiny of this Court. The assumed apprehension based on mere conjectures and surmises cannot be permitted to operate against the interest of the petitioner on the whims and fancies of the concerned authorities. When the statute bestows the right upon the petitioner to be considered for his release on parole, that right can only be scuttled in consonance with statutory provisions. The discretion vested in the authorities while assessing the request of the petitioner for release on parole is to be exercised in a pragmatic and justice-oriented manner. The authorities, in order to frustrate the right of the petitioner on the feigned apprehension of breach of peace, without conducting any effective inquiry based on cogent material, cannot be permitted to scuttle the right of the petitioner.



11. The other aspect that predominantly weighed with the competent authority in rejecting the request of the petitioner is that on an earlier occasion, after being released on parole, the petitioner jumped the parole and did not surrender until he was arrested by the police. Though this ground prima facie seems sufficient to disqualify the petitioner for the grant of parole, upon deeper scrutiny, it alone cannot outweigh the petitioner's right to be considered for parole. It is noteworthy that the Jail Superintendent, while recommending the petitioner's case for parole, mentioned in his report that although the petitioner is convicted of a heinous offence, he completes the condition of five years of custody as per the Haryana Good Conduct Prisoners Act and therefore can be released on parole.

12. It is the respondent's own case that after jumping the parole initially granted to the petitioner in the year 2001, he was convicted for the same under Sections 8/9 of the Haryana Good Conduct Prisoners Act and has undergone the sentence awarded to him in that regard. Therefore, to non-suit the petitioner for release on parole for the same act clearly amounts to double jeopardy. This fact assumes even more significance as no provision in the Haryana Good Conduct Prisoners Act, barring the petitioner from release on parole due to having jumped the earlier parole, has been brought to the knowledge of this Court. Therefore, unless the statute imposes any restriction on the petitioner's right to be released on parole due to having jumped the earlier parole, such a provision cannot be inserted by executive action into the statutory provisions.



13. The facts of the case reveal that the petitioner, after being convicted separately for having jumped parole, was sentenced by the judgment dated 04.11.2015 passed by the Chief Judicial Magistrate, Rohtak. He was ordered to be released on parole via an order dated 10.03.2022, passed by the Commissioner, Rohtak Division, Rohtak. However, his release could not take effect as the S.D.M. Najafgarh, Delhi, rejected the surety bonds furnished on behalf of the petitioner. The writ petition filed by the petitioner against the rejection of his surety bonds was, however, permitted to be withdrawn, with liberty to the petitioner to approach the authorities as per law.

14. It is, therefore, totally incomprehensible how the jumping of parole can be a circumstance for the rejection of the petitioner's request for parole by the competent authority, when the petitioner was already granted parole by the same competent authority in the same set of circumstances. It is also worthwhile to note that after the incident of his jumping parole earlier and being confined to custody again, the petitioner has undergone more than 9½ years of custody. The continued confinement of the petitioner without any possibility of temporary release, merely on the ground of his having jumped parole on an earlier occasion, would be contrary to the object and scope of the Haryana Good Conduct Prisoners Act. Needless to say, in order to address their apprehensions about the petitioner jumping parole, the authorities can very well lay down remedial conditions, including requiring heavy, solvent, and reliable

sureties, as deemed necessary, while accepting the surety bonds of the petitioner.

15. In view of my above findings, the present criminal writ petition is allowed to the extent that the impugned order, being unsustainable on the strength of the reasons mentioned therein, is quashed. The competent authority is directed to adjudicate the petitioner’s request for release on parole afresh, in light of the observations made herein above, within a period of three weeks from the date of receipt/production of the certified copy of this order.

(SUMEET GOEL)
JUDGE

January 01, 2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No