



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CRWP-8409-2024 (O&M)
Date of Decision:- 10.01.2025

VINOD KUMAR @ GAGGU
Versus
STATE OF PUNJAB AND OTHERS

....Petitioner
...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present : Mr. M.S. Saini, Advocate
for the petitioner (through video conferencing).

Mr. Rahul Jindal, AAG, Punjab.

HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Article 226/227 of the Constitution of India read with Section 3(1)(d) of the Punjab Good Conduct Prisoner (Temporary) Release Act, 1962 for issuance of a direction to the respondents to release the petitioner on parole by setting aside the impugned order/letter No.4060 dated 18.12.2023 (Annexure P-3), passed by District Magistrate, Hoshiarpur.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been convicted and is undergoing sentence awarded by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur vide order dated 12.04.2023, which reads as under:

Conviction under Section	Sentence imposed	Fine	In default of payment of fine
363 IPC	RI for a period of 3 years	₹3,000/-	RI for 3 months



366 IPC	RI for 5 years	₹5,000/-	RI for 5 months
6 of POCSO Act	RI for 20 years	₹20,000/-	RI for 1 year

3. The petitioner has challenged the judgment of conviction and order of sentence by way of filing Criminal Appeal No.CRA-D-1000-2023, which stands admitted for regular hearing, vide order dated 16.10.2023 and is pending before this Court.

4. The petitioner was arrested during the trial on 30.08.2022 and he has been convicted and sentenced by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur vide order dated 12.04.2023. As per the impugned order (Annexure P-3), the petitioner had sought parole for the first time after his conviction. The parole has been declined to the petitioner by the District Magistrate, Hoshiarpur by recording the following reasons:

"The report of Hon'ble Senior Superintendent of Police, Hoshiarpur is received vide letter No. 66796 dated 25.10.2023, in which he has not recommended for parole of prisoner No. 2107/C Vinod Kumar @ Gaggi son of Bishan Dass.
Therefore in view of the order of Hon'ble Deputy Commissioner Hoshiarpur, the case received from you vide letter under reference, is hereby consigned to the record room and the report of police department is being sent to you with this letter for information."

5. As per the report of Senior Superintendent of Police, Hoshiarpur (Annexure P-1), the following recommendations were made, which have been considered by the District Magistrate, Hoshiarpur while declining the parole to the petitioner:



"Vinod Kumar alias Gaggi son of Bishan Dass resident of Khushnagar, Police Station Hazipur, District Hoshiarpur can commit crime like his previous crime during his parole or he may do any other bad act because his house is near to the house of victim. Therefore you are not recommended to release prisoner Vinod Kumar on parole."

6. Learned counsel for the petitioner submits that the District Magistrate, Hoshiarpur-respondent No.3 has wrongly declined to grant the benefit of parole to the petitioner despite the fact that the Gram Panchayat vide report (Annexure P-2) has recommended 8 weeks' parole to the petitioner. He further contends that the order passed by respondent No.3 is merely on the basis of apprehensions and is not based on any facts.

7. Learned State counsel has submitted short reply by way of affidavit of Lalit Kumar, PPS, Deputy Superintendent of Police, Sub-Division Mukerian, District Hoshiarpur on behalf of the respondents No.1 and 2, in the Court today, which is taken on record.

8. Learned State counsel has opposed the present petition by submitting that during the trial, the petitioner was evading his arrest and even P.O. proceedings were initiated before his arrest. Learned State counsel further contends that the house of the petitioner is near to the house of the victim and there is apprehension that the petitioner can repeat the wrongful act. He further submits that the said apprehension has been expressed by Nambardar Roop Lal of the village, as such, the parole has been rightly declined.

9. We have heard and considered the aforesaid submissions.

10. The reasons recorded by the District Magistrate, Hoshiarpur-respondent No.3 does not refer about his opinion based on the facts and



regarding relevant statutory provisions. The Gram Panchayat of the concerned village vide report (Annexure P-2) has categorically submitted that none of the residents of the village has any objection for release of the petitioner on parole and there is no apprehension of disturbance of law and order, in case the petitioner is released on parole. The reasons recorded by the District Magistrate, Hoshiarpur relying upon the report of Senior Superintendent of Police, Hoshiarpur are merely apprehensions.

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 subsection (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 granddaughter 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 subsection (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 Hon'ble Apex Court while dealing with the Delhi Prison Act, 2000, has referred the objectives of releasing the petitioner on parole and furlough in ***Atbir vs. State of NCT of Delhi 2022 SCC Online SC 527***, which reads as under:

"To enable the inmate to maintain continuity with his family life and deal with familial and social matters, ii. To enable him to maintain and develop his self-confidence, iii. To enable him to develop constructive hope and active interest in life, iv. To help him remain in touch with the developments in the outside world, v. To help him remain physiologically and psychologically healthy, vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and vii. To motivate him to maintain good conduct and discipline in the prison."



13. 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.”

14. Keeping in view the above, we are of the considered opinion that the impugned order/letter No.4060 dated 18.12.2023 (Annexure P-3) passed by the District Magistrate, Hoshiarpur (respondent No.3) is merely based upon apprehensions, which has no basis. There is no reference of the



conduct of Inmate during his stay in the prison, while making the said apprehensions as basis of rejection of parole, as such, the said order is legally not sustainable and is accordingly set aside.

15. Consequently, the present petition is allowed. The impugned order/letter No.4060 dated 18.12.2023 (Annexure P-3) passed by the District Magistrate, Hoshiarpur (respondent No.3) is set aside. A direction is given to the District Magistrate, Hoshiarpur 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.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

10.01.2025
P.Bhatt

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>