**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No.3708 of 2026**

**Date of Decision: 24.04.2026**

Rohit Sagar .…….Petitioner

Versus

State of Himachal Pradesh & Ors. … Respondents

Coram:
**Hon'ble Mr. Justice Sandeep Sharma, Judge.**
Whether approved for reporting? [1] Yes.

**For the Petitioner:** Mr. Karan Kapoor, Advocate.

**For the Respondents**: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

**Sandeep Sharma, Judge**(oral):

The petitioner, who is presently undergoing sentence for his having committed offences punishable under Section 376AB of Indian Penal Code and Section 4 of POCSO Act, in terms of judgment dated 25.06.2024 passed by learned Additional District & Sessions Judge, Fast Track Special Court (POCSO) Kangra at Dharamshala, has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for the following main relief:-

> *"a. That the order dated, **Annexure P-3**, may kindly quashed and set aside by which the application for grant of parole has been rejected, by the respondents.*

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

**2.** Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties, are that petitioner is a convict and at present, is undergoing sentence for his having committed offences punishable under aforesaid provision of law, pursuant to judgment passed by competent Court of law. Though in terms of aforesaid judgment, petitioner has been sentenced to undergo rigorous imprisonment for a period of 25 years, but since he has already undergone sentence for more than three years, he applied for parole to meet the family members, who reside at Gautam Budh Nagar, Uttar Pradesh. Since afore prayer made on behalf of the petitioner came to be rejected vide communication dated 07.11.2025 (Annexure P-3), he has approached this Court in the instant proceedings, praying therein for the relief as has been reproduced hereinabove.

**3.** Since concerned District Magistrate did not recommend the case of the convict for grant of parole, based on the objection raised by the Superintendent of Police Gautam Budh Nagar, Uttar Pradesh, prayer made on behalf of the petitioner for parole has been rejected by the authority.

**4.** Pursuant to notices issued in the instant proceedings, respondent-State has filed reply, wherein facts, as have been noticed hereinabove, have not been disputed, rather it has been reiterated

that no positive or supportive material has been received from the verifying authorities to justify the release of the convict on parole as he was convicted and sentenced for 25 years under Section 376 AB of Indian Penal Code and Section 4 of POCSO Act.

**5.** Question, which needs to be determined in the case at hand is that “whether prayer made on behalf of the convict for parole can be rejected on the ground of gravity of offence alleged to have been committed by him and objection raised by the Deputy Commissioner of the area concerned.

**6.** Though reply filed by the respondents-State nowhere suggests that petitioner's conduct during incarceration was not satisfactory, but yet prayer made on behalf of the petitioner has been rejected on the ground that he has been convicted for a heinous offence and objection qua his release has been raised by the Deputy Commissioner Gautam Budh Nagar, where family of the petitioner resides. As per the report of the concerned District Magistrate, the petitioner is a habitual offender of shrewd type, and there is every likelihood that he may abscond after release on parole, as such, his case for release on parole is not recommended. Besides above, it has been further submitted in the reply that grant of parole is a privilege and not a matter of right of a convict. Section 3 of Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 (in short

"***Act***"), specifically provides that convict is entitled to release on parole subject to the satisfaction of the competent authority. Since in the instant case, competent authority has apprehension that petitioner may abscond and may also cause harm to the victim's family, prayer made on behalf of the petitioner for parole has been seriously opposed.

**7.** During arguments, Mr. Rajan Kahol, learned Additional Advocate General, also invited attention of this Court to Section 6 of the Act, which provides that notwithstanding anything contained in Sections 3 and 4, no prisoner shall be entitled to be released under this Act, if, on the report of the District Magistrate, the Government or an officer authorized by it in this behalf is satisfied that such release is likely to endanger the security of the State or the maintenance of public order.

8. Having heard learned counsel representing the parties and perused the material adduced on record, this Court finds that petitioner herein, pursuant to his conviction under Section 376AB of Indian Penal Code and Section 4 of POCSO Act, has been sentenced to undergo rigorous imprisonment for a period of 25 years in terms of judgment dated 25.06.2024. It is not in dispute that petitioner has already undergone sentence for more than three years. Section 3 of the Act entitles a convict to seek temporary release on parole, which

can be granted for one of the reasons as detailed in Section 3 of the Act, which reads as under:-

> ***"3. Temporary release of prisoners on certain grounds .***
> ***(1) The 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 prisoner if the Government is satisfied that,-***
> ***(a) a member of the prisoner's family has died or is seriously ill; or***
> ***(b) the marriage of the prisoner's son or daughter is to be celebrated ; or***
> ***(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or***
> ***(d) it is desirable so to do for any other sufficient cause.***
> ***(2). The period for which a prisoner may be released shall be determined by the 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), two weeks;***
> ***(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and***
> ***(c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks.***

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

***(4) The 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".***

**9.** By now, it is well settled that Court, while considering the prayer for parole, is not to be swayed by the nature and gravity of offence or the sentence which the convict is undergoing, rather case for grant of parole is to be considered keeping in view the object of granting parole. It is also to be kept in mind that a convict despite being convicted is required to make necessary arrangements for his family as well as his property, be it moveable or immoveable.

**10.** At this stage, it would be apt to take note of the judgment passed by Hon'ble Apex Court in **Asfaq versus State of Rajasthan and other,** passed in Civil Appeal No.10464 of 2017 arising out of SLP(C) No.16803 of 2017, wherein Hon'ble Apex Court, while elaborating upon the object and purpose of grant of parole, has also drawn a distinction between parole and furlough. It has been held that a parole can be defined as conditional release of prisoners i.e. an earlier release of prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time, whereas furlough can be granted in long terms imprisonment. Relevant paras

No. 7,9, 12, 16 and 37 of aforesaid judgment are reproduced herein blow:-

> “7) We may state at the outset that the reason because of which the High Court dismissed the writ petition filed by the appellant herein is not an apposite one and does not meet the test of law. The petition is dismissed only on the ground that the appellant is convicted in a case of serious and heinous crime and, therefore, parole cannot be claimed as a matter of right. As per the discussion that would follow hereinafter, the conviction in a serious and heinous crime cannot be the reason for denying the parole per se. Another observation made by the High Court is that since this Court had decided the appeal of the appellant affirming the conviction, it would not be appropriate for the High Court to exercise its discretion in favour of the appellant and if he so desires he may approach this Court for the said purpose. This again amounts to abdication of the power vested in the High Court. Insofar as conviction for the offence for which he was charged, i.e. under the provisions of TADA, is concerned, no doubt that has been upheld till this Court. However, the issue before the High Court was entirely different. It was as to whether the appellant is entitled to the grant of parole for twenty days which he was claiming. Merely because the matter of conviction of the appellant had come up to this Court would not mean that the appellant has to be relegated to this Court every time, even when he is seeking the reliefs unconnected with the main conviction. It is more so when in the first instance it is the High Court which is supposed to decide such a prayer for parole made by the appellant. With these remarks, we advert to the issue at hand.
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> 9) There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the

convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations some of which may be as follows:

(i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or

(ii) the marriage of the prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or

(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or

(iv) it is desirable to do so for any other sufficient cause;

(v) parole can be granted only after a portion of sentence is already served;

(vi) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and

(vii) parole may also be granted on the basis of aspects related to health of convict himself.

12) A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and

become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

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.

37) There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies.

> Such paroles are normally granted in certain situations some of which may be as follows:
> (viii) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or
> (ix) the marriage of the prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or
> (x) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or
> (xi) it is desirable to do so for any other sufficient cause;
> (xii) parole can be granted only after a portion of sentence is already served;
> (xiii) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and
> (xiv) parole may also be granted on the basis of aspects related to health of convict himself."

**11.** Most importantly, in afore judgment, Hon'ble Apex Court has held that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties and for this purpose, he has to come out for some time so that he is able to maintain his family and social contact. Hon'ble Apex Court in aforesaid judgment further held that theory of criminology underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognize reformation as one of the objectives, it provides

justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, *albeit* for periods. Most importantly, Hon'ble Apex Court in aforesaid judgment held that there cannot be any presumption that a person, who is convicted for serious or heinous crime is to be, ipso facto, treated as a hardened criminal, rather hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. If a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorized as a hardened criminal. Hon'ble Apex Court in afore judgment held that release on parole is designed to afford some relief to the prisoners in certain specified exigencies, which shall also include temporary release of the prisoner for ploughing, sowing or harvesting or carrying on any other agriculture operation on his land or his father's undivided land actually in possession of the prisoner.

**12.** Careful perusal of the order laid challenge in the instant proceedings clearly reveals that behaviour of the petitioner during his

stay in jail for more than three years was found good and satisfactory and there was no complaint, if any, against him, but prayer made on behalf of the petitioner for grant of parole has been merely rejected on the ground that District Magistrate as well as Superintendent of Police area concerned, who have not recommended his case on the ground that petitioner is accused of heinous crime and in the event of his being enlarged on parole, he may again indulge in these activities.

**13.** As has been observed hereinabove and held by Hon'ble Apex, while considering the prayer made on behalf of the accused for parole, Courts are not to be swayed by the nature or gravity of offence committed by the convict, rather such prayer is required to be decided taking note of various judgments, as has been culled out in para 37 of the judgment, reproduced hereinabove. Moreover, in the case at hand, it cannot be laid down as a proposition of law that a person convicted for his having committee serious crime is not entitled to be considered for parole, rather in that situation, very purpose of taking ground report from the District Magistrate and Superintendent of Police, is to ascertain whether in the event of release on parole, there exists a reasonable likelihood of the prisoner indulging in criminal activities again. In the present case, District Magistrate as well as Superintendent of Police, while objecting the parole of the petitioner, has failed to assign any cogent reason, which may justify his

apprehension that in the event of grant of his release on parole, petitioner would again indulge in such activities. No doubt, petitioner has been convicted and sentenced to undergo 25 years rigorous imprisonment under Section 376 AB of Indian Penal Code and Section 4 of POCSO Act, but that does not mean that in the event of his being enlarged on parole, he would again indulge in these activities, especially when there is nothing to suggest that prior to registration of the present case, petitioner was involved in any such offences. Once for his having done illegal activity, petitioner has been convicted by the competent court of law, coupled with the fact that there is no other case against him under the act, prayer made on his behalf for parole could not have been rejected on the ground that in the event of his being enlarged on parole, he will again indulge in these activities again. There is every possibility that after being convicted under aforesaid provisions of law, petitioner would mend his ways and after his having completed period of sentence, he would come back to mainstream, but in case aforesaid grounds sought to be raised at the behest of District Magistrate and Superintendent of Police are accepted and petitioner is not granted benefit of parole, there is every likelihood of his becoming harden criminal because in that situation, he will have no chance to return back to the mainstream.

**14.** Consequently, in view of the above, present petition is allowed and impugned orders dated 07.11.2025 (**Annexures P-3)** is quashed and set aside. The petitioner is ordered to be released on parole for 28 days subject to his furnishing personal bond in the sum of ₹ 2,00,000/- with two sureties in the like amount to the satisfaction of the Superintendent Jail with an undertaking to maintain good conduct during the period of parole and to surrender before the Superintendent Jail after the expiry of the period of parole. The Probation Officer is also directed to maintain a close watch on the activities of the petitioner and to report any deviation from the direction issued by the Court.

**15.** The Superintendent Jail is free to impose any other suitable condition at the time of the release of the petitioner.

**(Sandeep Sharma),**
**Judge**

April 24,2026
**(sunil)**