

is entirely on different footing because in that case, the question for consideration was as to whether the policy applicable on the date of death of the employee will apply or the one applicable on the date of consideration of application would apply. But in the instant case, it is not the case of the petitioner that some different scheme was applicable on the date of death of the father of respondent No.2. It is the case where only the different clarifications have been issued on the same policy by the Department which does not amount to any amendment in the Original Scheme dated 9.10.1998.

(9) Thus, we do not find any illegality in the impugned order dated 9.4.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

(10) Before parting with this judgment, it will be pertinent to mention that even as per the admitted case of the petitioners as per para No.2 of the petition, Hakam Singh, the father of respondent No.2 has died on 17.9.2012 and respondent No.2 was married on 5.10.2012 which means that he has married after the death of his father. Thus, on the date of death, he was unmarried.

(11) Thus, keeping in view our aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

Amit Aggarwal

Before S. S. Saron & Rekha Mittal, JJ.

ROSHAN LAL @ ROSHI—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CRWP No.222 of 2015

August 21, 2015

Constitution of India, 1950—Art. 226—Indian Penal Code, 1860—Ss. 364-A, 302, 201 read with S. 34—Parole denied as there would be breach of peace—Temporary release on parole is according to Section 6 of the Act (Punjab Good Conduct Prisoners (Temporary Release) Act)—Not necessary to consult D.M. where State Government is satisfied of good conduct—Parole may be declined in case of threat to security of State of maintenance of public order—Mere breach of peace is not ground to decline parole. case of threat

to security of State of maintenance of public order—Mere breach of peace is not ground to decline parole.

Held that the petitioner has been denied temporary release on parole mainly for the reason that there would be breach of peace in case he is released on parole.

(Para 4)

Further held that temporary release on parole has been declined as the local police had not recommended his release on parole. Besides, the complainant of the case against the petitioner had represented threat to their life and liberty on his release.

(Para 6)

Further held that parole, therefore, has been declined to the petitioner primarily for breach of peace and it is not shown that there is an endanger to the security of the State or the maintenance of public order as enjoined by the provisions of Section 6(ii) of the Act. Mere breach of peace in the absence of threat to the security of the State or the maintenance of public order cannot be a ground to decline temporary release of a prisoner on parole.

(Para 7)

Bhupinder Pal Kaur Brar, Advocate
for the petitioner.

Arshvinder Singh, A.A.G., Punjab
for the State.

S.S. SARON, J.

(1) The present petition has been filed under Article 226 of the Constitution of India seeking quashing of the order dated 31.10.2014 (Annexure P-4) passed by the Additional Director General of Police (Jails), which is based on the report dated 05.02.2014 (Annexure P-2) of the District Magistrate, Shaheed Bhagat Singh Nagar (respondent No.3) and further for release of the petitioner on parole.

(2) The petitioner was arrested in case FIR No. 65 dated 03.08.2010 registered at police Station City Nawanshahr for the offences under Sections 364-A, 302 and 201 read with Section 34 of the Indian Penal Code ('IPC'-for short). He was convicted by the learned Sessions Court on 10.04.2013 and sentenced to undergo rigorous imprisonment for life. During the period of his incarceration, the petitioner sought temporary release on parole in terms of Section 3

(i) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act – for short). The same having been declined vide impugned order dated 31.10.2014 (Annexure P-4), he has filed the present petition. One of the primary reasons for declining the parole is that FIR No. 133 dated 09.11.2011 stands registered against the petitioner at police Station Nawanshahr for the offences under Sections 223/224 IPC; besides, case FIR No. 96 dated 03.06.2012 stands registered at police Station, Kharar, under Section 25 of the Arms Act. It is mentioned that there is a threat to breach the peace if the petitioner is released on parole for four weeks; besides, earlier also he had absconded.

(3) In terms of the reply that has been filed, it is stated that the petitioner is a hardened criminal and is undergoing life imprisonment for a heinous crime in case FIR No.65 dated 3.8.2010 registered at Police Station Balachaur, District Shaheed Bhagat Singh Nagar for the offences under Sections 364-A, 302, 307 and 201 read with Section 34 IPC. Besides, FIR No.133 dated 9.11.2011 stands registered at Police Station Nawanshahr for the offences under Sections 223 and 224 IPC for fleeing from police custody. Another FIR No.96 dated 3.6.2012 stands registered at Police Station Kharar for the offence under Section 25 of the Arms Act. It is stated that there is every apprehension of petitioner's indulging in anti-social activities and there is also apprehension of breach of peace and danger to security of State. Further more, it is stated that there is also danger to the life and liberty to the complainant party in case the petitioner is released on parole. Therefore, it is stated that no ground for release of the petitioner on parole is made out as the petitioner had earlier absconded and he was convicted for the same in case FIR No. 133 dated 09.11.2011 registered at police Station city Nawanshahr for the offence under Section 224 IPC in which he has already undergone the sentence of one year rigorous imprisonment.

(4) We have given our thoughtful consideration to the matter. The petitioner has been denied temporary release on parole mainly for the reason that there would be breach of peace in case he is released on parole; besides, he had earlier absconded for which he has been convicted for the offence under Section 224 IPC.

(5) As regards the ground of breach of peace for declining parole, it is to be noticed that temporary release on parole in accordance with the provisions of the Act can be declined in terms of Section 6 of the Act, which provides cases where prisoners are not entitled to be

released in certain cases. Section 6 (i) of the Act envisages that it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid Sections 3 and 4 of the Act. Section 6 (ii) of the Act envisages that no prisoner shall be entitled to be released under the Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order.

(6) Therefore, temporary release to a prisoner may be declined in a case of threat to security of the State or the maintenance of public order. A perusal of the impugned order dated 31.10.2014 (Annexure P-4), however, shows that the temporary release on parole to the petitioner has been declined as the local police had not recommended his release on parole. Besides, the complainant of the case against the petitioner had represented threat to their life and liberty on his release. It is mentioned that there was a threat to breach of peace if the petitioner was released on parole and he had earlier also absconded. In the reply added grounds for declining parole have been mentioned, which are though not mentioned in the impugned order for declining parole. In exercise of power of judicial review under the supervisory writ jurisdiction of the High Court, the grounds as mentioned in the impugned order are to be seen which cannot be substituted or enhanced on the basis of reply that has been filed.

(7) The parole, therefore, has been declined to the petitioner primarily for breach of peace and it is not shown that there is an endanger to the security of the State or the maintenance of public order as enjoined by the provisions of Section 6 (ii) of the Act. Mere breach of peace in the absence of threat to the security of the State or the maintenance of public order cannot be a ground to decline temporary release of a prisoner on parole in accordance of the provisions of the Act. As regards the petitioner being an absconder, it is to be noticed that he has undergone his one year sentence of rigorous imprisonment.

(8) In the circumstances, the impugned order dated 31.10.2014 (Annexure P-4) is not sustainable and is liable to be set-aside and quashed and the competent authority is liable to decide the temporary release case of the petitioner on parole afresh.

(9) Accordingly, the writ petition is allowed and the impugned order dated 31.10.2014 (Annexure P-4) is set aside and quashed and the competent authority shall take a fresh decision in respect of the temporary release of the petitioner on parole in accordance with law.

Amit Aggarwal

Before Rajan Gupta, J.

CENTRAL BUREAU OF INVESTIGATION—Petitioner

versus

HARSIMRANJIT SINGH AND OTHERS—Respondents

CRM No.M-6758 of 2015

September 16, 2015

Code of Criminal Procedure, 1973—S.156—Indian Penal Code, 1860—Ss. 419, 420, 467, 468, 471—Emigration Act, 1983—S.24—Magistrate’s power to direct CBI to conduct investigation—Jurisdiction of Special Court of CBI—Magisterial powers could not be extended so as to issue direction to CBI to enquire—Power can be exercised only by High Court and Supreme Court under Article 226 and 32 respectively—CBI manual says agency can conduct preliminary enquiry only—Special Court to only conduct trial in cases already investigated by CBI.

Held that only the High Court or Hon’ble Supreme Court can entrust the investigation to CBI in exercise of powers conferred by Articles 226 and 32 respectively. This impliedly takes away the power of the Magistrate and the Special Courts to direct investigation by the CBI in a given case. Even inherent power has to be exercise by the Court sparingly and cautiously.

(Para 9)

Further held that it further needs to be noticed that CBI Manual provides that agency is entitled to conduct a preliminary enquiry into certain cases and thereafter take a decision where FIR is required to be registered or not..... In considered view of this Court, Special Court is created only to conduct trail of cases which have already been investigated by CBI in cases of corruption as well as in special crime..... there can, thus, be no doubt that entrustment of such crimes to Central Bureau of Investigation can be only by the High Courts and