

Before S.S. Saron & Darshan Singh, JJ.

RAM CHANDER—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CRWP No.554 of 2016

March 06, 17

Indian Penal Code, 1860 – S. 302 – The Punjab Good Conduct of Prisoners (Temporary Release) Act, 1962 – Ss.2(aa), 3, 4, 5A and 6(2) – Parole – Murder convict serving life – Not a hardcore prisoner – Entitled to parole – Prisoner not entitled to release – If likely to endanger security of State or maintenance of public order – Likelihood of committing crime while on parole – Not a sufficient ground to decline parole.

Held that, the provisions of the Act provide for the temporary release of prisoners for good conduct on certain conditions as enacted by the legislature of the State of Punjab. Temporary release on parole is granted on certain conditions as envisaged by the provisions of Section 3 of the Act; besides, temporary release on furlough is granted in terms of Section 4 of the Act. In terms of Section 5A of the Act, prisoners are not entitled to temporary release in certain cases, like cases where death sentence has been awarded or a prisoner is a 'hardcore prisoner'. 'Hardcore prisoner' has been defined in Section 2 (aa) of the Act as follows:-

"(aa)"hardcore prisoner" means a person confined in prison under a sentence of imprisonment, who has been convicted of -

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;"

(Para 11)

Further held that, the petitioner does not fall under the said category and therefore, is not a hardcore prisoner. Besides, Section 6 (2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is 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.

(Para 12)

Further held that, therefore, release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the District Magistrate, Unnao (respondent No. 3) for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment in a case like murder, so there is a probability that he may commit a crime on release on parole. The likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not to be taken as apprehension of a threat to the security of the State or the maintenance of public order. As already noticed, parole can be declined in case the competent authority is satisfied that his release is likely to endanger the security of the State and maintenance of public order. No such eventuality has been mentioned in the present case.

(Para 13)

A.S. Trikha, Advocate
for the petitioner.

Amarjit Kaur Khurana, Addl. A.G., Punjab
for the respondents.

S.S. SARON, J.

(1) Learned counsel for the State has filed reply by way of affidavit of Mr. Daljit Singh Bhatti, PPS, Superintendent, Central Jail, Jalandhar at Kapurthala on behalf of respondents No.1 and 2. The same is taken on record.

(2) Heard learned counsel for the parties.

(3) The petitioner - Ram Chander by way of the present petition under Article 226 of the Constitution of India seeks quashing of the order dated 01.02.2016 (Annexure P1) passed by the District Magistrate, Unnao (respondent No. 3) whereby his case for temporary release on parole has not been recommended. The petitioner prays for six weeks' parole to meet his family members.

(4) The petitioner was arrested in case FIR No. 156 dated 17.05.2009 registered at Police Station Maqsudan, District

Jalandhar, for the offence punishable under Section 302 Indian Penal Code ('IPC' - for short). He was convicted in the said case and sentenced to undergo life imprisonment. Criminal appeal, i.e. CRA-D No. 954-DB of 2010, filed by him is pending in this Court. The case of the petitioner for his temporary release on parole was initiated by the Superintendent, Central Jail, Jalandhar at Kapurthala (respondent No. 2) in terms of the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act' - for short). The petitioner, it is stated, maintained good conduct in jail. Therefore, he was liable to be allowed parole.

(5) The case of the petitioner was sent for police report to the District Magistrate, Unnao (respondent No.3). The District Magistrate, Unnao (respondent No.3) sent a report duly verified through the Senior Superintendent of Police/In-charge Station House Officer of the area in which he was to spend the parole period. The parole of the petitioner has not been recommended by the District Magistrate, Unnao (respondent No.3) as there was likelihood that he may commit a crime if allowed parole. Therefore, the petitioner assails the said order not recommending his parole.

(6) In terms of the reply that has been filed, it is stated that the case of the petitioner for temporary release on parole for a period of four weeks was considered. A police report and the report of the District Magistrate concerned are compulsory for grant of parole. The District Magistrate, Unnao (respondent No. 3), it is stated, did not recommend the temporary release of the petitioner on parole on the ground that he was undergoing life imprisonment in a case like murder, so there was a probability that he may commit a crime on his release on parole.

(7) Learned counsel for the petitioner submits that temporary release on parole to the petitioner could only be declined in case the circumstances provided for by the provisions of Section 6 (2) of the Act were there i.e. his release is likely to endanger the security of the State or the maintenance of public order and not on any other ground.

(8) In response, learned counsel for the State submits that getting a report from the District Magistrate where the prisoner is to spend the period of his temporary release is necessary and the District Magistrate, Unnao (respondent No. 3) having not recommended the parole of the petitioner, the same has rightly been declined.

(9) We have given our thoughtful consideration to the matter.

(10) As already noticed, the petitioner is undergoing life imprisonment in case FIR No. 156 dated 17.05.2009 registered at Police Station Maqsudan, District Jalandhar, for the offence punishable under Section 302 IPC. He has been convicted in the said case and sentenced to undergo life imprisonment. Criminal appeal, i.e. CRA-D No. 954-DB of 2010, filed by the petitioner is pending in this Court.

(11) The provisions of the Act provide for the temporary release of prisoners for good conduct on certain conditions as enacted by the legislature of the State of Punjab. Temporary release on parole is granted on certain conditions as envisaged by the provisions of Section 3 of the Act; besides, temporary release on furlough is granted in terms of Section 4 of the Act. In terms of Section 5A of the Act, prisoners are not entitled to temporary release in certain cases, like cases where death sentence has been awarded or a prisoner is a 'hardcore prisoner'. 'Hardcore prisoner' has been defined in Section 2 (aa) of the Act as follows:-

"(aa) "hardcore prisoner" means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;"

(12) The petitioner does not fall under the said category and therefore, is not a hardcore prisoner. Besides, Section 6 (2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is 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.

(13) Therefore, release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the District Magistrate, Unnao (respondent No. 3) for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment in a caselike murder, so there is a probability that he may

commit a crime on release on parole. The likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not to be taken as apprehension of a threat to the security of the State or the maintenance of public order. As already noticed, parole can be declined in case the competent authority is satisfied that his release is likely to endanger the security of the State and maintenance of public order. No such eventuality has been mentioned in the present case.

(14) This Court in case of *Varun @ Gullu v. State of Haryana and others*, CRM-M No. 34013 of 2009, decided on 26.04.2010, has held as under:-

“No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by a statute and on fulfillment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

In the cases, which have come up earlier before this Court as per judgments referred to by the learned counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated under Section 6 of the Act.

We find that the authorities under the Act have been consistently declining the request for parole or furlough only for the reason of apprehension of breach of peace, whereas there is no such condition under the Act. This is so in spite of numerous judgments of this Court that

apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough.”

(15) The petitioner has placed on record affidavit (Annexure P2) of his brother Kalisahankar son of Shyam Sundar, resident of Gadan Khera, Ward No.8, Police Station Kotawali Sadar, Unnao, District Unnao (UP). in which he has stated that in case his brother (i.e. the petitioner) is released on parole, there is no opposition from anybody; besides, his brother (i.e. the petitioner) would pass his parole leave by following the rules of parole and the petitioner would certainly abide by the law and order and would surrender in jail within the time granted for which he undertakes complete responsibility. A 'Panchayat Nama' (Annexure P3) has also been filed by the petitioner in support of his plea for parole. It is stated in the Panchayat Nama that no one was against the petitioner on his coming home on parole. Besides, there is also no probability of law and order being affected. Therefore, it was forcefully requested for release of the petitioner on parole for six weeks to enable him to come home.

(16) In view of the above position, the recommendation made by the District Magistrate, Unnao (respondent No.3) is not supported by any material and is even otherwise unsustainable. Therefore, it would be just and expedient to accept the petition and ask the authorities to pass appropriate orders for release of the petitioner on parole.

(17) In the circumstances, the criminal writ petition is allowed, the recommendation dated 1.2.2016 (Annexure P-1) made by the District Magistrate, Unnao (respondent No.3) not to release the petitioner on parole is set aside and quashed and the competent authority shall consider the case of the petitioner *de hors* the said recommendation and pass necessary orders in accordance with law for temporary release of the petitioner on parole subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behaviour during the period of parole and also surrender in the jail after expiry of his parole.

Shubreet Kaur