Before Raj Mohan Singh, J.

PARAMJIT SINGH SAHOLI—*Petitioner*

versus

STATE OF HARYANA—*Respondents*

CWP No. 3008 of 2022

April 07, 2022

Indian Penal Code, 1860—S.376 and 506—Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013—S.2(aa)—Principles for parole and furlough—Order granting furlough especially during Assembly Election in Punjab were scheduled for 20.02.2022 challenged—Furlough to be granted in cases of long term imprisonment only i.e. in cases where sentence is not less than 4 years—First furlough may extend to 21 days and thereafter, maximum for 14 days—Furlough be granted only once in a year as it is intended to break monotony of imprisonment and no specific reason required to be given for grant of furlough—Accused was granted furlough for 21 days and he has completed the same and returned to jail, therefore, at this stage, more or less, the writ petition has become infructuous—Since petitioner has not laid any ground of applicability of subsequent sentences during currency of sentences under a rape case, therefore, it would be appropriate for State to consider all pros and cons arising out of all convictions for the purpose of further furlough/parole, if any, in accordance with law — Writ petition disposed of.

Held that, it is also settled proposition that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards the construction, which exempts the subject from penalty, rather than the one which imposed penalty. In plain words, it is submitted that the view favourable to the accused should be accepted. It will not be lawful to proceed upon as assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even in case of some defect in the phraseology used by the Legislature, the Court cannot aid the Legislature's defective phrasing or add and amend or by construction make up the deficiency unless and until, challenge is laid to the vires of such enactment.

(Para 18)

Further held that, the settled rule of construction of penal provisions is that if there is a reasonable interpretation, which will avoid the penalty in any particular case, the Court must adopt the construction and if there are two reasonable constructions, the Court must give the more lenient one and if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards the construction.

(Para 19)

Further held that, perusal of the writ petition would show that the petitioner of course pleaded that he has *locus standi t*o maintain the present writ petition. The pleadings are wanting at the threshold as to how and in what manner, the Assembly Election has been prejudiced, particularly when Gurmit Ram Rahim has been ordered to stay in Gurugram only.

(Para 20)

Further held that, the respondent-State has rightly interpreted the import of Section 2(aa) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013. Since the petitioner has not laid any such ground of applicability of subsequent sentences during currency of sentences under a rape case, therefore, it would be appropriate for the State to consider all pros and cons arising out of all the convictions for the purpose of further furlough/parole, if any, in accordance with law.

(Para 21)

Gagan Pradeep Singh Bal, Advocate
for the petitioner.

Baldev Raj Mahajan, A.G., Haryana with

Pawan Girdhar, Addl., A.G., Haryana
for respondents No.1 to 7.

Monica Chhiber Sharma, Sr. DAG, Punjab
for respondents No.8 and 9.

Satya Pal Jain, Addl., Solicitor General of India with
Dheeraj Jain, Senior Counsel
for respondent No.10/Union of India.

Vinod Ghai, Sr. Advocate with
Kanika Ahuja, Advocate
Abhishek Sanghi, Advocate

Gurdas Sarwara, Advocate
andJitender Khurana, Advocate
for respondent No.11.

RAJ MOHAN SINGH, J.

(1) Petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction thereby quashing the order, vide which Gurmit Ram Rahim has been ordered to be released on furlough by the respondent-State, especially during when Assembly Elections in Punjab were scheduled for 20.02.2022.

(2) The present petition was filed on 11.02.2022 and the same was re-filed on 14.02.2022 after removing some objections. The matter came up for hearing on 18.02.2022. Notice of motion was issued on that day with notice re:stay. The case was ordered to be listed on 21.02.2022. On 21.02.2022, the case could not be heard as the same was assigned to an earmarked State counsel. The case was adjourned to 23.02.2022. On the adjourned date, the case was argued by learned counsel for both the sides to some extent and thereafter, learned counsel for the petitioner sought time to supplement his arguments on the basis of precedents. The case was finally argued before this Court on 25.02.2022 and theorder was kept reserved.

(3) Learned counsel for the petitioner vehemently submitted that respondent No.11 is undergoing sentence inrape case as well as in murder case. He falls under the category of hardcore prisoner and has not completed the requisite period for grant of furlough. His release on furlough soon before the Assembly Elections in Punjab is an act of *mala fide* in order to materially affect the Assembly Elections in Punjab.

(4) Convict Gurmit Ram Rahim was convicted and sentenced to undergo 10 years imprisonment and fine of Rs.15,10,000/- for committing offence under Sections 376 and 506 IPC qua prosecutrix-A. Similar sentence was awarded in respect of committing offence under Sections 376 and 506 IPC qua prosecutrix-B vide order of sentence dated 28.08.2017 in case bearing FIR RC No.5(S)/(2002)/SIU-XV/CHG dated 12.12.2002 under Sections 376, 506 IPC, Police Station CBI/SCB/Chandigarh by Special Judge, CBI, Panchkula. Both the sentences were ordered to run consecutively.

(5) It is not in dispute that Gurmit Ram Rahim was further convicted and sentenced to life imprisonment in case bearing FIR RC

No.10(S)/2003/SCB/CHG dated 09.12.2003 under Section 120-B read with Section 302 IPC, Police Station CBI/SCB/Chandigarh by Special Judge, CBI Court, Panchkula on 17.01.2019. Gurmit Ram Rahim was further convicted and sentenced to life imprisonment in case bearing FIR RC No.08(S)/2003/SCB/CHG under Section 120-B read with Section 302, 506 IPC, Police Station CBI/SCB/Chandigarh by Special Judge, CBI Court, Panchkula on 18.10.2021. Both the aforesaid sentences of life imprisonment in these cases will start after expiry of first sentence awarded to Gurmit Ram Rahim in the rape case. There are two other cases pending against Gurmit Ram Rahim i.e. FIR No.1(S) 2015/SCU.V/2015 under Sections 120-B, 326, 417, 506 IPC, Police Station SCB, CBI Chandigarh, which is pending in the Court of Judicial Magistrate, CBI Court, Panchkula and he is on bail in the said case and FIR No.63 dated 02.06.2015 under Sections 380, 295-A, 201, 414, 451, 120-B IPC, Police Station Baja Khana, District Faridkot, in which production warrants were received on 26.10.2021, but the convict has not been produced till date.

(6) Gurmit Ram Rahim filed an application for grant of parole for 42 days vide application dated 17.01.2022. The said application was forwarded by Superintendent, District Jail, Rohtak to the office of Director General of Prisons, Haryana vide letter No.277 dated 19.01.2022. Thereafter, Director General of Prisons, Haryana vide letter No.4885 dated 21.01.2022 had requested the Additional Chief Secretary, Jail Department to obtain opinion of learned Advocate General, Haryana as to whether convict Gurmit Ram Rahim is entitled for parole in view of his involvement in number of cases. The pointed reference was whether Gurmit Ram Rahim falls under the category of hardcore prisoner as per Section 2(aa)(i)(8) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013. For ready reference Section 2(aa) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013 is reproduced hereasunder:-

> "(aa) "hardcore prisoner" means a person-
> (i) who has been convicted of-
> (1) robbery under section 392 or 394 IPC;
> (2) dacoity under section 395, 396 or 397 IPC;
> (3) kidnapping for ransom under section 364-AIPC;
> (4) murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;
> (5) rape with murder under section 376 read with302 IPC;

(6) rape with a woman below sixteen years of age;
(7) rape as covered under section 376-A, 376-D or 376-E IPC;
(8) serial killing i.e. murder under section 302 IPC in two or more cases in different First Information Reports;
(9) murder under section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case;
(10) lurking house trespass or house breaking where death or grievous hurt is caused under section 459 or 460 IPC;
(11) either of offence under sections 121 to 124-AIPC;
(12) immoral trafficking under section 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) involving minors or under section 366-A, 366-B, 372 or 373 IPC;
(13) offence under section 17(c) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or
(14) offence under section 14 of the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012); or
(ii) who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months;

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded;

Provided further that if a conviction has been set aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to death penalty; or

(iv) who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(v) who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act:

Provided that the State Government may, by notification include any offence in the list of offencesmentioned above."

(7) Office of Advocate General, Haryana gave its opinion to the Government that offence of criminal conspiracy punishable under Section 120-B IPC has not been mentioned anywhere in Section 2(aa)(i)(8) of the Act which defines "serial killing'. The term used in this provision is 'murder' simpliciter and no other offence is mentioned anywhere. It clearly indicates that the Legislation has intended to cover only the 'actual killer' under the definition of 'hardcore prisoner' and not the 'conspirator'. In order to cover a prisoner under the definition of 'hardcore prisoner', it is necessary that he must have participated in actual commission of the substantive offence of murder under Section 302 IPC and the aiding offence of criminal conspiracy under Section 120-B read with Section 302 IPC will not be covered under the category of 'hardcore prisoner'. Keeping in view the factual and legal position mentioned above, the prison authorities may consider the representation of Gurmit Ram Rahim for the grant of parole on the grounds mentioned therein as per norms. The opinion given by learned Advocate General, Haryana was forwarded to the Director General, Haryana for further necessary action. On receipt of information of learned Advocate General, Haryana, Director General of Prison, Haryana vide letter No.5350 dated 27.01.2022 forwarded the same to the Superintendent, District Jail, Rohtak for further necessary action. By that time, Gurmit Ram Rahim had completed 6 years, 1 month and 20 days of sentence including remissions and therefore, on 31.01.2022, Gurmit Ram Rahim filed an application to Superintendent District Jail, Rohtak for grant of three weeks furlough to meet his family members.

(8) In view of opinion furnished by the office of Advocate General, Haryana, the Superintendent, District Jail, Rohtak vide letter No.488-91 dated 31.01.2022, initiated the process andsent the same to the concerned authority i.e. District Magistrate, Gurugram and Commissioner Rohtak Division, Rohtak for consideration as per provision of Section 4 of Haryana Good Conduct Prisoner (Temporary Release) Act, 1988. For readyreference, Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is reproduced

hereasunder:-

> "4.1 The State Government or any other officer authorized by it in this behalf may, in consultation with such other officer as may be appointed by the state Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who-
>
> (a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the persistence detention, if any;
>
> (b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned at least three annual good conduct remission;
>
> provided that nothing herein shall apply to a prisoner who-
>
> (i) is a habitual offender as defined in sub-section (3) of section 2 of Punjab Habitual Offenders (Control and Reform) Act, 1952; or
>
> (ii) has been convicted of dacoit or such other offence as the State Government may, by notification, specify.
>
> (2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.
>
> (3) Subject to the provisions of clause (d) of sub- section (3) of section 8, the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner."

(9) District Magistrate, Gurugram vide his letter No.8978 dated 01.02.2022 submitted his recommendations to the Commissioner, Rohtak Division, Rohtak. On 06.02.2022, Additional Director General of Police, CID vide letter No.8889/90 dated 06.02.2022, submitted his report to the Commissioner, Rohtak Division, Rohtak in the context of reviewing the security arrangement of Gurmit Ram Rahim on weekly basis while on furlough. Commissioner, Rohtak Division, Rohtak vide order dated 07.02.2022

has granted 21 days furlough to convict Gurmit Ram Rahim from 07.02.2022 to 27.02.2022. District Magistrate, Gurugram vide his office order No.9036/P.B dated 07.02.2022 accepted two sureties (Rs.5 lacs each) for releaseof Gurmit Ram Rahim on furlough. In this way, Gurmit Ram Rahim was released from jail on furlough for 21 days from07.02.2022 to 27.02.2022 and he was directed to surrender in jail premises on 28.02.2022. Petitioner also filed a representation dated 08.02.2022, which was received through E-mail on 11.02.2022 by the competent authority.

(10) Perusal of Section 2(aa)(i)(8) of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 wouldshow that Section 120-B IPC is not included in Section 2(aa)(i)(8) of the Act as amended till date. Furlough is granted inlong term imprisonment only i.e. in cases where sentence is not less than 4 years. First furlough exceeds to 21 days and thereafter, maximum for 14 days. Furlough can be granted only once in a year and the same is intended to break the monotony of imprisonment and no specific reasons to be given for grant of furlough.

(11) Hon'ble Apex Court in ***Criminal Appeal No.1159 of*** 2021 (Arising out of SLP (Crl.) No.5699 of 2021 titled State of ***Gujarat and another*** versus ***Narayan @ Narayan Sai @ Mota Bhagwan Asaram @ Asumal Harpalani*** decided on20.10.2021 has formulated broad principles for parole and furlough and the same are enumerated hereasunder:-

> "(i) Furlough and parole envisage a short-term temporary release from custody;
>
> (ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;
>
> (iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;
>
> (iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right toclaim furlough;
>
> (v) The grant of furlough must be balanced against the public interest and can be refused to certain categoriesof

prisoners."

(12) In the instant case, main thrust of the petitioner is that Gurmit Ram Rahim being convict in rape case qua prosecutrix-A and prosecutrix-B is undergoing sentence of 10 years each consecutively. He is also involved in two more murder cases and therefore, he falls under the category of hardcore prisoner.

(13) On the other hand, learned State counsel and learned counsel for respondent No.11 on the strength of definition as amended by Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 submitted that Gurmit Ram Rahim is not convict of substantive offence under Section 302 IPC, rather he has been sentenced with the aid of Section 120-B IPC and his case does not fall in any of the sub sections of Section 2(aa) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013. Serial killing i.e. murder under Section 302 IPC in two or more cases in different FIRs would not be attracted as conspirator is not directly involved under Section 302 IPC, rather he has been sentenced for life with the aid of Section 120-B IPC. Sentence of life imprisonment in two murder cases would start only after expiry of his first sentence awarded in rape case i.e. 10 years imprisonment each with fine of Rs.15,10,000/- for committing offence qua prosecutrix-A and prosecutrix-B and these sentences are to run consecutively in the first case decided by Special Judge, CBI Court, Panchkula on 28.08.2017. The sentences in murder cases have not started so far. The interpretation of hardcore prisoner has to be appreciated in view of subsequent convictions, therefore, status of Gurmit Ram Rahim at the threshold of definition in Section 2(aa)(i) of the Act does not depend upon the fact whether subsequent sentences have in fact started or not.

(14) The Statute identifies an offence of murder simpliciter and not a conspiracy to murder or abetment thereof. The conviction of Gurmit Ram Rahim is not directly under Section 302 IPC, rather the same is with the aid of Section 120-B IPC. Had the intention of legislature been to include aiding offence under Section 120-B IPC for the purpose of defining hardcore prisoner, the language of Amendment Act of 2013 would have been different altogether. It has been excluded in the definition clause of hardcore prisoner. Cases of Section 120-B IPC are consciously excluded and the Legislature was very much alive to the situation, in which Section 120-B IPC has been excluded. The words used in an Act cannot be used or interpreted loosely and inappropriately, rather the same are to be given true meaning,

importance and are to be correctly and exactly used. Sub Section 8 of Section 2(aa)(i) of the Act used for serial killing i.e. murder under Section 302 IPC in two or more cases indifferent FIRs would make it clear that except Section 302 IPC, no other section has been given any place, nor has the same been discussed by the Legislature in its sub section. It would be relevant to note that if there is an ambiguity or an omission in words used by the Legislature, the authority or Court would not go to its aid to correct the same. The scope and remedy lies some where else, when the provision itself is challenged or under interpretation of status. The Legislature has to be interpreted in the manner to understand its true spirit and the intention of the Legislature has to be read in the manner it is written. To understand in true spirit, the intention of the Legislature, the reading should be together from the words which are used. In certain enactments and policies, the Legislature in its wisdom has included Section 120-B IPC in heinous crime, for example in the guidelines for Premature Release Policy, 2013 framed by the Government of Punjab while giving definition of heinous crime, Section 120-B IPC is specifically mentioned along with Section 302 IPC. In case of Amendment Act, 2013, the words used are distinct and has to be read in the manner as suggested by the Legislature. The Court is not supposed to go to its aid to correct or make up the deficiency for its convenience. True spirit of the Legislature has to be read in the manner as is given by the Legislature. Similarly, Government of Haryana in its premature policy dated 12.04.2002 has specifically mentioned Section 120-B IPC along with Section 302 IPC for definition of heinous crime. UnderSection 25 of the Hindu Succession Act, 1956, a murderer is disqualified from getting inheritance. Since the intention was to include abettors also, the language clearly says-**"**A person who commits murder or abets the commission of murder**"**. Under POTA 2002, there is a distinction between actual assailants and the conspirator who is not the assailants. Different punishment is prescribed under Section 3(1) of the Act for the actual doer (death or life), but altogether different punishment under Section 3(3) of the Act for a mere conspirator (five years to imprisonment for life). Since Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2013 only mentions murder under Section 302 IPC, therefore, it means only murder simpliciter under Section 302 IPC and a person charged under Section 120-B read with Section 302 IPC will not fall within the scope of the Statute in order to infer his inclusion under the definition of hardcore prisoner.

(15) Evidently, the Legislature in terms of Section 2(aa) of the Amendment Act, 2013 has nowhere discussed even slightly, remotely or combinedly Section 120-B IPC or offence of criminal conspiracy in the whole Statute. The combination of other Sections like Section 387 read with Section 302 IPC, Section 387 read with Section 307 IPC and Section 376 read with Section 302 IPC can be seen apparently. The Legislature could have used Section 302 read with Section 120-B IPC, but there isno such combination shown in sub Section (8) of Section 2(aa)(i) of the Amendment Act, 2013.

(16) On the other hand, words used 'serial killing' or 'contract killing' have been used to make it more clear for the execution that the persons who are actually real culprits committing murder should be put under the category of hardcore prisoner. If we read sub Section (9) of Section 2(aa)(i) where with offence under Section 302 IPC, the word contract killer has been used by the Legislature. If contract killer can be interpreted, then the word conspirator could also have beenused by the Legislature in the language of sub Section (8) along with Section 302 IPC or with serial killer, but the same has not been used by the Legislature.

(17) Evidently, the intention of the Legislature would be to restrain those convicts from release who after coming out or on release, may again indulge in crimes like serial killing or incontract killing in order to satisfy their psyche. The import or construction of sections which are not part of Statute by way of little interpretation, would be contrary to the provision of Statute and thus unconditionally, the same would defeat the purpose of Statute itself.

(18) It is also settled proposition that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards the construction, which exempts the subject from penalty, rather than the one which imposed penalty. In plain words, it is submitted that the view favourable to the accused should be accepted. It will not be lawful to proceed upon as assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even in case of some defect in the phraseology used by the Legislature, the Court cannot aid the Legislature's defective phrasing or add and amend or by construction make up the deficiency unless and until, challenge is laid to the vires of such enactment.

(19) The settled rule of construction of penal provisions is that if there is a reasonable interpretation, which will avoid the penalty

in any particular case, the Court must adopt the construction and if there are two reasonable constructions, the Court must give the more lenient one and if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards the construction, which exempts the subject from penalty, rather than the one which imposed penalty. Reference can be made to ***Pandurang Dagadu Parte*** versus ***Ramchandra Baburao Hirve and others,***[1] and ***Sanjay Dutt*** versus ***State through CBI*** [2]**.** Perusal of the writ petition would show that the petitioner of course pleaded that he has *locus standi t*o maintain the present writ petition. The pleadings are wanting at the threshold as to how and in what manner, the Assembly Election has been prejudiced, particularly when Gurmit Ram Rahim has been ordered to stay in Gurugram only. Strict terms and conditions were imposed qua his movements and his security was constantly under close vigil of the police administration. For want of particular details in the writ petition, no such finding can be given as to how and in what manner, damage has been caused to the election proceedings of the petitioner who has also fought election from one of the political parties in Punjab.

(20) Since Gurmit Ram Rahim was granted furlough for 21 days and he has completed the same and has returned to the jail premises, therefore, at this stage, more or less, the writ petition has become infructuous. In my considered opinion, the respondent-State has rightly interpreted the import of Section 2(aa) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013. Since the petitioner has not laid any such ground of applicability of subsequent sentences during currency of sentences under a rape case, therefore, it would be appropriate for the State to consider all pros and cons arising out of all the convictions for the purpose of further furlough/parole, if any, in accordance with law.

(21) For the reasons recorded hereinabove, this writ petition is disposed of.

Reporter

[1] SCC 1997 Online Bombay 131

[2] Bombay (II), SCC 1994 (5) SCC410.