

(2015) 12 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 307/2015

Deep Raj

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 29-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 10, 3(1)
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 12 SHI CK 0001

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Vinod K. Sharma, Advocate, for the Appellant; Parmod Thakur, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—On the oral request of Mr. Vinod K. Sharma, Advocate, the Superintendent of Jail, Model Central Jail, Nahan, District Sirmaur, Himachal Pradesh is added as respondent No. 3.

2. The present petition has been filed seeking direction to the respondents to grant parole on the grounds mentioned in the petition. Reply to the petition has been filed by the respondent-State.

3. Petitioner was convicted under Section 376 IPC in FIR No. 62/2012. Petitioner submitted an application dated 5.5.2014 to the Superintendent, Model Central Jail, Nahan, for parole under The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968. The matter regarding parole of the petitioner was got inquired by the District Magistrate, Bilaspur through Superintendent of Police, Bilaspur. However, case of the petitioner was rejected on 19.6.2014. He submitted another application for undertaking agriculture work on 27.10.2014. It was again forwarded by the Superintendent Jail, Nahan to the District Magistrate

and Superintendent of Police, Bilaspur. According to the order of the District Magistrate, Bilaspur dated 1.12.2014, if the petitioner was released on bail, he could cause danger to the family and mother of the victim and there was apprehension of breach of peace and tranquility in the area. Petitioner submitted yet another application seeking parole. District Magistrate and Superintendent of Police did not recommend temporary release of the petitioner due to imminent danger to the life and property of the family of the victim. Case of the petitioner was rejected on 17.6.2015.

4. According to Section 3(1) of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968, temporary release of the petitioner could be ordered on following grounds:

- (a) a member of the prisoner's family has died or is seriously ill; or
- (b) the marriage of the petitioner's son or daughter is to be celebrated; or
- (c) the temporary release of the petitioner 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.

5. The State has framed Himachal Pradesh Good Conduct Prisoners (Temporary Release) Rules, 1969 under Section 10 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968. Procedure for the release has been provided under Rule 3 of the said Rules.

6. It is evident from annexure R-3 that the Gram Panchayat, Hambot has no objection to the release of the petitioner on parole. Only apprehension is that the release of the petitioner on parole can cause breach of peace and affect tranquility in the area. Case of the petitioner has again been rejected as noticed above on 1.12.2014. It is evident from the report that the Gram Panchayat has no objection to the release of the petitioner on parole but his case was not recommended by the District Magistrate apprehending breach of peace and danger to the family and mother of the victim. Police has also objected to the release of the petitioner. In communication dated 6.6.2015, again Pradhan, Gram Panchayat Hambot has raised no objection but the victim's mother Vyasani Devi has recorded her statement and objected to the grant of parole to the petitioner. According to this communication, Rekha Devi was married two years back in District Hamirpur and was staying with her in-laws. However, case was again rejected on 17.6.2015 despite the report of the Panchayat Secretary that the petitioner's father has fractured his backbone and he was confined to bed. Mother of the petitioner after fracture of leg is not in a position to move.

7. The Court is of the considered view that taking into consideration the fact that parents of the petitioner are crippled and confined to bed and he has to look after agricultural work, petitioner can be enlarged on parole for 15 days. He has

to look after his parents and Gram Panchayat also has not raised objection to his release. Victim is already married. Thus, there is no imminent threat or danger to the victim or her family.

8. The learned Single Judge of Madras High Court in Masilamani Vs. State of Tamil Nadu, , has held that it is not in dispute that in normal circumstances, a prisoner approaches Jail authorities and State Government for suspension of sentence or release on parole under the relevant rules but, in the extraordinary circumstances, Court should relegate technical and procedural matters to the background and take human factors into consideration and give relief. The learned Single Judge has held as under:

"[4] Learned Government Advocate relied on the decision of Sengottuvelan, J. in R. Rajan v. State wherein he declined to grant parole. It has to be noted that in the circumstances of the said case the learned judge has pointed out that there is absolutely no emergency and the petitioner could have approached the Government or the prison authority and without the same, he cannot file the petition under Section 482 , Cr.P.C. The learned counsel for the petitioner, on the other hand, produced the order passed by the learned Judge, Sengottuvelan, J. in Thyagarajan v. State wherein he has granted parole for 30 days on the ground that the petitioner's wife is going to deliver a child and this is a fit case for granting parole. It is not in dispute that in normal circumstances the prisoner has to approach the jail authorities and the State Government for suspension of the sentence and release of him on parole under the Tamil Nadu Suspension of Sentence Rules for grant of parole. But, as rightly observed by Natarajan, J. in Rama Krishnan v. The State of Tamil Nadu (supra) referred to above, in extraordinary situations, the Courts should relegate technical and procedural matters to the background and take human factors into consideration and give relief to the parties within the bounds of law. Otherwise, the functioning of courts would be only as Courts of law and not as Courts of Justice. The above view was also affirmed by a Division Bench of this Court in the above quoted writ petition. In the instant case, it is not in dispute that the petitioner has been granted parole on prior occasions and he has complied with the rules of parole properly. It is also seen from the affidavit filed by the wife of the petitioner, who is an advocate, and the medical certificate and the case sheet produced by her that the mother of the petitioner is seriously laid up in the nursing home and his only brother is admitted in the Jipmer Hospital, Pondicherry and that the presence of the petitioner is very much required as his mother would like to see him very much before her life comes to an end. This is an extraordinary situation which warrants this Court to exercise the power under Section 482 , Cr.P.C. on humanitarian grounds. The ratio laid down in the above quoted cases is on all fours applicable to the facts of this case."

9. Accordingly, the present petition is allowed. Respondents are directed to release the petitioner on parole with effect from 26.1.2016 to 9.2.2016. Petitioner is directed to surrender himself back to the Superintendent, Model

Central Jail, Nahan on or before 10.2.2016 (Noon).