

(2020) 07 SHI CK 0197
In the High Court Of Himachal Pradesh
Case No : CRMMO No.207 Of 2020

Dheeraj Verma

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 136, 142, 226

Indian Penal Code, 1860 — Section 302

Arms Act, 1959 — Section 27

Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 3, 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(d), 3(2), 3(2)(c), 4

Citation : (2020) 07 SHI CK 0197

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rajesh Kashyap, Raju Ram Rahi

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner, in the instant petition, is a life convict in a case under Section 302 of Indian Penal Code (hereinafter for short 'IPC') and Section 27 of the Arms Act and is serving his sentence in Lala Lajpat Rai District & Open Air Correctional Home, Dharamshala, Himachal Pradesh (hereinafter referred to as 'Jail').

2. The petitioner was temporarily released on parole for 42 days, vide order dated 01.06.2020, issued by the Deputy Superintendent of the Jail, with direction to report back to the Superintendent of Jail, on 14.7.2020, before Lock-Up.

3. Petitioner has approached this Court, by way of present petition, seeking relief to extend his parole leave for sixty days more, on the ground that he has completed about 17 years of imprisonment and on account of good conduct he has been permitted to work outside the Jail and, thus, before pandemic he had been working as Goldsmith, since last 8 years, in a rented shop, under the

authorized scheme to work outside the Jail. According to the petitioner, he was granted parole leave due to COVID-19 with a view to decongest the jail and in the past he had never misused his liberty, while working outside the Jail or during the parole leave granted in his entire terms of imprisonment either in Model Central Jail Kanda or in Open Jail Bilaspur or in Open Air Correctional Home, Dharamshala.

4. It is case of the petitioner that due to imposition of lockdown, his shop also remained closed and he was not able to earn his livelihood from shop and has suffered monetary loss and also could not pay the rent of shop and thus, the shop opened by him during parole has to be shut down on expiry of parole, because keeping in view safety of inmates in jail, prisoners are not being allowed to go outside for work and it will cause not only financial loss but also mental harassment.

5. It is canvassed that in view of CORONA Pandemic, the Supreme Court has also favoured decongestion of Jails and, thus, praying for taking lenient view, extension of 60 days of parole leave has been advocated, enabling him to run his shop.

6. Lastly, it is submitted that petitioner has applied to the Director General of Prisons for extension of parole leave, but no information has been received by him till filing of the present petition and apprehending rejection of his application, he has approached this Court.

7. Dealing with a case of parole under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA Act), the Apex Court, in Poonam Lata v. M.L. Wadhawan & another, (1987) 3 SCC 347, has held that the Court has no power to substitute its opinion to the administrative functions, like abridging or enlarging the detention and it would not be open to the Court to reduce the period of detention by admitting a detenu on parole, rather the only power which is available to the Court is, to quash the order in case it is found to be illegal and the Court would have no jurisdiction either under the Act or under general principle of law or in exercise of extraordinary jurisdiction, whether it is under Article 226 or Article 32 of the Constitution to deal with the duration of period of detention. The same principle will be applicable with respect to the question of determining the period of parole which is governed by specific Act.

8. In another case of parole under the COFEPOSA Act itself, in Sunil Fulchand Shah v. Union of India & others, (2000) 3 SCC 409 (hereinafter referred to as), the Apex Court has held that parole, *stricto sensu*, may be granted by way of a temporary release as contemplated under the COFEPOSA Act by the Government of its functionaries, in accordance with the parole rules or administrative instructions framed by the Government and this function is administrative in character and shall be subject to the terms of the rules or the instructions, as the case may be, and, therefore, for securing release on parole, a detenu has,

therefore, to approach the concerned authorities or the jail authorities for grant of parole which shall be subject to terms and conditions imposed by the concerned authority as per law. It is further held that Courts cannot, generally speaking, exercise the power to grant temporary release to detenus, on parole, and temporary release of a detenu can only be ordered by the Government or an officer subordinate to the Government, whether Central or State. It is also clarified by the Supreme Court that bar of judicial intervention to direct temporary release of detenu would not affect the jurisdiction of High Court under Article 226 of the Constitution or of the Supreme Court under Article 32, 136 or 142 of the Constitution to direct temporary release of detenu, where request of detenu to be released on parole for a specified reason and/or for a specified period, has been, in opinion of the Court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made, but it has been observed that such jurisdiction, however, has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that Court leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu.

9. In *Asfaq v. State of Rajasthan & others*, (2017) 15 SCC 55, explaining object of release on parole, it has been observed 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 come out for some time so that he is able to maintain his family and social contact, with objective of reformation of the convict. It has further been observed that provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails, and the main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society, and even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. The Court also observed that those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, have a significantly higher chance of failure, and that when offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens and furloughs or parole can help prepare offenders for success in merger in the society, and the public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, alongwith other competing public interests, has also to be kept in mind while taking decision of granting or refusing parole or furlough and further that all prisoners are not appropriate for grant of furlough or parole as the society must isolate those who show patterns of preying upon victims. It is also observed that formulation of guidelines/enactment of law on parole by various State Governments is in order to bring out objectivity in the decision making and to decide appropriately as to whether parole needs to be granted in a particular case or not and such a decision should be taken in accordance with guidelines framed or statute enacted.

10. Where there is statute providing provision of release of convict on parole, the scope of intervention by the Court is limited to judicial review of grant or refusal of parole under Article 226 or 32 of the Constitution, as the case may be. It is obvious for the reason that grant or refusal of parole or furlough is an administrative function of Government or the competent authority prescribed under relevant Act, Rules, Regulations or Guidelines and, normally, the Court should not enter in shoes of such authority to perform administrative function. However, at the same time, the Courts are there for judicial review of omission and/or commission of the authority, warranting judicial interference of the Court on various valid grounds, like failure in performing duty; arbitrary exercise of power or acting beyond legal powers, etc.

11. In the State of Himachal Pradesh, temporary release of prisoners for good conduct, on certain conditions, is governed by Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 (hereinafter referred to as 'Act'). In the Act temporary release of prisoners has been provided in Sections 3 and 4. Temporary release under Section 3 is commonly known as 'Parole', extension whereof is being sought by the petitioner, whereas Section 4 provides temporary release of prisoners on furlough, which is not in issue in present case.

12. Section 3 of the Act provides temporary release of prisoners on certain grounds for a period specified therein, 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, authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein."

13. Clause (c) of Section 3(1) provides temporary release of prisoners for agricultural operations, for which maximum period of parole, i.e. six weeks, has been provided under Section 3(2)(c), and six weeks, i.e. 42 days, is maximum period of parole provided under the Act. Admittedly, petitioner is not seeking extension of parole for agricultural operations. His request is not covered under clause (a), (b) or (c) of Section 3(1) but under clause (d), as he is asking for extension of parole for running shop which has been allowed to him under the authorized Scheme.

Under Section 3(1)(d) of the Act maximum permissible parole period is four weeks, whereas petitioner has already availed parole of 42 days, i.e. six weeks.

14. In response to the notice, respondent No.1 Director General of Prisons & Correctional Services, Himachal Pradesh [in short 'DGP(P)], has imparted instructions to the Advocate General alongwith copy of Radio Wireless Message, dated 10.7.2020, communicating rejection of request of petitioner for extension of parole. Copy of such information, conveying rejection of extension request, has also been endorsed to the petitioner. Instructions, alongwith communication of rejection, have been taken on record.

15. It is submitted in the instructions that the petitioner was released on parole w.e.f. 02.06.2020 to 13.07.2020, for 42 days, and he is under obligation to surrender on 14.07.2020.

16. It has specifically been stated in the instructions that considering the lower vulnerability of people of Himachal Pradesh to COVID-19, Government of Himachal Pradesh has resumed inter-district movement of people and public/private transport w.e.f. 1.6.2020, and the Offices of the Government are also working in full strength and all the Jails of Himachal Pradesh are safe and no case of COVID-19 has been reported so far and the Department is taking full precautions for protection of prisoners and prison staff and, thus, there is no merit in the application for extension.

17. It appears from the contents of instructions, imparted by DGP(P), that request before him for extension of parole was for 42 days only, whereas in present petition, petitioner has prayed for extension of 60 days.

18. From contents of release order, dated 1.6.2020 (Annexure A-1), read with provisions of Section 3 of the Act, it is apparent that the petitioner has been released in pursuance to warrant dated 29.05.2020, as he has been released temporarily, i.e. on parole, for maximum period of 42 days.

19. There is no provision for extension of parole period beyond the period

prescribed under Section 3(2) of the Act. Therefore, after expiry of the period of parole, which is maximum in the present case, petitioner is supposed to surrender before the Jail authorities. There is no bar for filing successive and subsequent application for temporary release on parole. Section 3(1)(d) provides temporary release, if it is desirable to do so for 'any other sufficient cause', but under this clause maximum period of temporary release, as provided in Section 3(2)(b) of the Act is four weeks. In any case, 'sufficient cause' is to be assessed by the concerned authority as it is an act to be performed by the competent authority under the Act.

20. In present case, petition has been preferred for extension of parole leave, which is purely an administrative function to be performed by the concerned authority in accordance with the Act and the Rules framed thereunder. So far rejection of application of petitioner is concerned that has not been assailed herein. Neither prayer has been made nor any material is available on record so as to adjudicate the legality of the order passed by the authorities, rejecting the application of the petitioner for extension of parole. Application for extension of parole period and order of rejection thereof have not been placed on record either by the petitioner or by the respondent.

21. Under Section 3 of the Act, in all eventualities, highest period of parole is in case of temporary release for carrying on agricultural operations, which is six weeks and in all other cases the maximum period is either two weeks or four weeks. Petitioner has availed maximum period of parole, i.e. six weeks, in fact, which was available for carrying out agricultural operations. Two parole periods available, under different clauses of Section 3(1) of the Act, may also be clubbed and period of parole provided under Section 3(2) of the Act may either be clubbed or added or may be coincided and run concurrently, depending upon prevailing circumstances.

22. In present case, as a matter of fact, parole granted to the petitioner stands expired on 13.07.2020, i.e. today, and he is under obligation to surrender on 14.07.2020.

23. So far as problem being faced by the petitioner with respect to his shop, permitted to be run, under authorized Scheme, is concerned, this issue is to be considered by concerned Jail Authority, in accordance with law, including provisions of the Scheme. Admittedly, in this petition, petitioner is not seeking relief on the basis of provisions of such Scheme. Concerned Authority is expected to consider this grievance of the petitioner, sympathetically, undoubtedly as per rule/law applicable.

23. In view of the provisions of law and ratio laid down by the Supreme Court, I find no merit in present petition and, thus, rejecting the prayer of the petitioner, it is disposed of, with direction to the petitioner to surrender before the jail authorities on 14.07.2020, with liberty to the petitioner to renew his request for parole, with justifiable reasons as available to him, as per provisions of law, as

applicable and/or apply for permission to allow him open his shop under authorized Scheme, if otherwise permissible as per provisions of the Scheme, coupled with other instructions/orders/rules/law applicable and in case of receiving such request of the petitioner, the authority concerned is directed to consider the same sympathetically and compassionately without being influenced by the observations made in this judgment and also without being annoyed by the filing of the present petition, but considering the request and facts and circumstances stated therein, purely on its own merit.