

(2019) 10 SHI CK 0124
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 726 Of 2019

Harbhajan Singh

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Himachal Pradesh Good Conduct Prisoners' (Temporary Release) Act, 1968 — Section 3, 3(1), 3(a), 4, 6
Indian Penal Code, 1860 — Section 302
Constitution Of India, 1950 — Article 21

Citation : (2019) 10 SHI CK 0124

Hon'ble Judges : L. Narayana Swamy, CJ;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Surender Thakur, Ashok Sharma, Ritta Goswami

Final Decision : Disposed Of

Judgement

L. Narayana Swamy, CJ

1. The petitioner, who is a life convict, made applications under Section 4 of the Himachal Pradesh Good Conduct Prisoners' (Temporary Release) Act, 1968 (hereinafter referred to as 'the Act') on two occasions for grant of parole.

The said applications came to be dismissed by respondent No. 2 vide letters dated 6th October, 2016 (Annexure P-1) and 4th February, 2017 (Annexure P-2). Hence, the instant petition has been filed seeking quashment of the said annexures with a direction to the respondents to consider the case of the petitioner for grant of parole under the provisions referred to above and to release him on parole for a period of two months.

2. Learned counsel for the petitioner submits that the petitioner is a life convict for the offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and is serving sentence from the date of conviction, i.e. 30th June, 2015. He has made the applications for grant of parole

on the ground of ill health of his wife and son and the supporting documents have been annexed. On considering the medical reports of wife and son of the petitioner, the District Magistrate has given the reports and in terms of the conditions stipulated in Section 6 of the Act, has opined that in case the petitioner is released on parole, he may endanger the security of the State or maintenance of public order. It is his further contention that the opinion expressed by the District Magistrate is contrary to Section 6 of the Act in view of the fact that rejection could be only on the ground that if by releasing a prisoner on parole, he is likely to endanger the security of the State or maintenance of the public order. The applications made for grant of parole could be rejected on the said ground, but in the present case, no such situation/ground has been mentioned and reflected in the rejection order of the District Magistrate. Even the Gram Panchayat also gave its consent stating its no objection in case the petitioner is released on parole. The wife of the victim, however, has objected to the parole on the ground that there may be threat to her life since the convict has murdered her husband.

4. In the facts and circumstances spelt out hereinabove, learned counsel for the petitioner submitted that the case of the petitioner has not been properly considered by the respondents-Authorities and non-consideration of the case for grant of parole to the petitioner for the purpose of Section 6 of the Act is contrary to law and also in violation of human rights. Merely for the reason that the petitioner has been convicted for an offence punishable under Section 302 IPC, does not mean that all his rights, including the human rights have got suspended. Even if the petitioner is convicted for life, he still retains the human rights and some rights under Article 21 of the Constitution of India.

5. Learned Advocate General supports the objection raised by the respondents-Authorities. It is his contention that the opinion of the victim, who stated that in case the petitioner is released on parole, there may be chances of lending threats to her life, itself shows that there is every likelihood of disturbance of public order and the District Magistrate, exercising his powers, has rightly opined to the Government not to grant benefit of parole to the petitioner. Therefore, the learned Advocate General has justified the orders passed by the respondents-Authorities and submitted that this writ petition be dismissed.

6. We have heard learned counsel for both the parties.

7. Initially the application was made in the year 2016. After rejection of two applications for grant of parole to the petitioner, the wife of the convict-petitioner was constrained to make an application (Annexure P-3) to the Hon'ble Chief Justice of this Court, seeking parole of her husband, upon which the comments of Superintendent, Model Central Jail, Nahan, were sought in the said application vide Annexure P-4. The comments (Annexure P-5) were received. On consideration of the application/ complaint made by the wife of the petitioner, the order (Annexure P-6) was passed in the matter whereby the petition was ordered to be listed on judicial side and the case was entrusted to the present counsel as

Legal Aid Counsel.

8. It would be appropriate to record herein that in the instant case for grant of parole to the petitioner, what is to be looked into is as to whether the wife and son of the petitioner are suffering from the diseases as reflected in the representations/applications.

9. In an application, if it is made for the benefit of parole under Section 3 of the Act, the Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release a prisoner temporarily for a specific period.

10. Under Section 3 of the Act, on the report of the District Magistrate, the prisoner can be released temporarily for a specific period if the Government is satisfied that a member of the prisoner's family has died or seriously ill or the marriage of the prisoner's son or daughter is to be celebrated or the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land. The release of a prisoner on parole is also on the satisfaction of the Government that the same is desirable for any other sufficient cause.

11. At the time of filing the applications for grant of parole, the petitioner, in support of sub-Section (a) of Section 3 of the Act, had taken a ground that his wife was suffering from some illness and his son was suffering from some mental illness and admitted in the Mental Hospital. The present condition of the wife and son of the petitioner is not known since the applications were made prior in time.

12. At this stage, learned counsel for the petitioner has produced the medical reports of the wife of the petitioner issued by the Doctors, the perusal whereof reveals that she is suffering from gall stone.

13. Under these circumstances, though the provisions are silent, but it shall be the duty of the District Magistrate to delegate some official(s) to assess the reasons or grounds stated in the application for parole, namely, whether any family member of the prisoner's family is seriously ill or died. In the instant case, no such verification appears to have been made by the District Magistrate.

14. Though, it is for the petitioner/applicant to make an application for release on parole by supplying the relevant material for the purpose of appreciation, but it is to be presumed that the petitioner, who is a prisoner, cannot be in a position to procure and produce the relevant material.

15. It has come on record that the wife of the petitioner is suffering from some illness and his son is suffering from some mental illness. Hence, due to the said reason and also owing to the fact that they are rustic villagers, they may not be in a position to approach the Doctors for issuance of necessary reports/certificates.

16. Under these circumstances, the moment any application for grant of parole is

received, it shall be the duty of the District Magistrate and/or any other State machinery to approach the family members of the prisoner to find out as to whether any family member has died or is seriously ill or any other ground stated in the application is true or not.

17. In terms of Section 6 of the Act, grounds are to be stated for dis-entitling a person for grant of parole, but, for the said purpose, the District Magistrate is supposed to make a report to the Government. The report of the District Magistrate should be subjective on the basis of an assessment of the grounds set out in the application form. The application cannot be rejected only by expressing an objective opinion. The assessment should be always subjective, though, verification with respect to family condition may be objective. On the basis of the report, the Government or an officer authorized by it, on its satisfaction, can reject the case. At the cost of repetition, it is worthwhile to record herein that the word 'satisfied' employed in Section 6 of the Act, should be in objective manner. The satisfaction shall not be, in any manner, based upon the personal opinion of a person appointed by the Government.

18. For rejection of an application for parole, there are two grounds set out in Section 6 of the Act. Firstly, in case a prisoner is released, he will likely to endanger the security of the State. Admittedly, the petitioner has been convicted for the offence committed under Section 302 IPC. But, in no way, it could be inferred that he is likely to endanger the security of the State and even if so, the State has got enormous powers to put restrictions on the petitioner to protect the Security of the State. The second ground is maintenance of public order. In this regard, in the response made by the District Magistrate, there is no reference as to whether he laid threat to the public order.

19. When these two grounds, set out in Section 6 of the Act are not reflected or mirrored in the report of the District Magistrate, we have to presume that the District Magistrate has given its report without application of mind. When a provision or a statute directs an officer to do a particular job in a particular manner, it shall be the duty of that officer to do the said job in that particular manner only. When a District Magistrate is directed to make a report on the basis of assessment in an objective manner, he shall do it in that manner only.

20. Further, the rejection by the Government or the officer authorized by the Government should be on two grounds, namely, when it is likely to endanger the security of the State or the maintenance of the public order, which are lacking in the instant case.

21. In *Francis Coralie Mullin v. The Administrator, UT Delhi*, AIR 1981 SC 746, Hon'ble Mr. Justice Marshall has aptly said and we quote. "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate."

22. In *Kharak Singh v. State of UP*, AIR 1963 SC 1295, it has been held that life means more than mere animal existence. Right to live is not restricted to mere

animal existence. It means something more than just physical survival.

23. In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, which was followed in *Francis Coralie v. Delhi Administration*, supra it has been held that right to live does not mean mere confinement to physical existence but it includes within its ambit the right to live with human dignity.

24. Seeking parole/remission/pre-mature release or furlough is not a right of a detainee. However, the same has to be considered in the light of the observations made hereinabove. The consideration should always keep in view the rights of the prisoners. The release of a prisoner from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct during incarceration and show a tendency to reform themselves and become good citizens.

25. The Hon'ble Supreme Court in *Asfaq vs. State of Rajasthan and others* (2017) 15 SCC 55, in para 15 of the judgment has held as under:

"15.A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment."

26. From the discussion made hereinabove, it is clear that the Hon'ble Supreme Court has propounded a re- formative theory. Under the said concept, an opportunity is to be granted to a person to get himself reformed and in case he gets himself reformed, he will be a person to live in the society. It is also worthwhile to extract relevant portion of paras 17 and 18 of the said judgment herein:

"17. From the aforesaid discussion, it follows 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 maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict.....

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. 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....."

27. Many a times the State takes up a ground that the prisoner has committed heinous offence and granting parole/remission or pre-mature release is likely to endanger the security of the State or the maintenance of the public order. From the above discussion, we feel that the conviction in a serious and heinous crime cannot be the reason for denying the parole per se. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case, parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced.

28. In *Inder Singh v. State (Delhi Administration)* (1978) 4 SCC 161, the Hon'ble Supreme Court has held that if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up.

29. In *Shakuntala Devi v. State of Delhi* 1996 (36) DRJ 545, it has been held as under:

"5. In *Poonam Lata v. M.L. Wadhawan*, it has been held by their Lordship that 'Release on parole is a wing of re- formative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen.'"

In *Inder Singh v. State*, the Apex Court has devised another humanizing strategy, viz. a guarded parole release every year atleast a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by living in a small world of his own cribbed, cabined and confined within the four walls of the prison. In the case of *Inder Singh* (supra), their lordships directed that:-

"..... if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be enlarged on parole for two months. 'Their lordships further added that "Article 21 of the Constitution in the jurisdiction root for this legal liberalism."

30. In the present case, since the applications for parole have been made by the convict/petitioner somewhere in the years 2016-2017. Now since a considerable long time has elapsed, we deem it appropriate to grant liberty to the convict/petitioner to make a fresh application for his parole satisfying the conditions stipulated under Section 4 of the Act. In case such an application is made by the convict/petitioner, the District Magistrate is directed to delegate a person to visit

the family of the petitioner to assess his family conditions/ circumstances and consider the application for parole made by the convict/petitioner afresh and forward its report to the Government within a period of one week from the date of receipt of a copy of this judgment. Thereafter, the Government or any other Officer appointed under Section 3 and sub-Section (1) of Section 4 of the Act is directed to take a decision on the parole application within a further period of two weeks, keeping in view the observations made hereinabove. It is made clear that the report made by the District Magistrate should also demonstrate that the said report is based only on the conditions set out in Section 6 of the Act.

31. With these observations, the writ petition is disposed of, so also the pending miscellaneous applications, if any.