
(1995) 05 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3287-M of 1995

Jag Mohinder Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 11-05-1995

Acts Referred:

Citation : (1995) 2 RCR(Criminal) 590

Hon'ble Judges : V.S.Aggarwal, J

Advocate : Ashwani Talwar, KS. Godara, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. Petitioner Jag Mohinder Singh son of Satbir Singh is undergoing imprisonment for life in District Jail, Karnal. He was sentenced by the learned Additional Sessions Judge, Panipat on 16.4.1993 and was an undertrial prisoner since 19.3.1989. He seeks temporarily parole under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter described as "the Act") for agricultural purpose. He asserted that his father is not in a position to look after the fields.

2. Notice of the application had been issued to the State of Haryana. It contests the application pleading inter alia that concession of parole is not a right. The petitioner applied for temporary release on parole on 12.10.1994. His parole case was sent to District Magistrate, Panipat for verification. The District Magistrate, Panipat did not recommend the release of the petitioner on parole because there is an apprehension of breach of peace in the village. Consequently, the request of the petitioner was rejected. I have heard the parties' counsel and seen the relevant record.

3. The Act provides for temporary release for prisoners on certain conditions. Under section 3(1) of the Act, the State Government can in consultation with the District Magistrate or any other officer appointed in this behalf subject to such conditions as may be prescribed for temporary release to the prisoner for a

period that is specified in sub section (2) of section 3 of the Act. Section 3(1)(c) of the Act permits temporary release of the prisoner for ploughing, sowing or harvesting purposes. The land could be his father's undivided land, actually in possession of the prisoner. Section 6 of the Act is in the form of proviso to section 3 of the Act and reads as under :

"Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate, the State Government or an officer authorised 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".

4. It in clear terms prescribes and restricts the powers to release a prisoner on parole. No prisoner would be entitled to be released on temporarily parole if on the report of the District Magistrate, the State Government is satisfied that the release is likely to endanger the security of State or maintenance of public order.

5. The learned counsel for the petitioner urged that mere apprehension of breach of peace in the village will not fall within the purview of the word "security of the State" or the maintenance of public order but the arguments advanced is totally misconduct. The maintenance of public order and apprehension of breach of peace in the village in the facts must be taken as synonymous. When there is a breach of peace in a particular area, necessarily the State has to maintain the public order. The argument, thus, which has so addressed, must be rejected.

6. In that event, it was argued that in any case, the said apprehension is not correct. Reliance was placed on the certificate purported to have been given by the Panchayat of the village that nobody has any objection to the visit of the petitioner in the village. On the contrary, it has simply been pointed out by the State that there is apprehension of breach of peace in the village. It is not indicated that as to how the law and order is to be adversely affected. The attention of the Court is being drawn to the decision of the Supreme Court in Bhagwat Saran and others v. State of U.P. and others, 1983(1) C.L.R. 504. The said decision of course does not pertain to the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. But the principle of law therein and facts considered have their material bearing on the decision, The same is being reproduced for the sake of facility :

After hearing counsel on either side and considering the affidavit of the respondents filed herein we are satisfied that it is a case where the Committee's recommendations should have been accepted by the Government. The Committee had recommended the release of these prisoners after taking into consideration the behaviour inside the jail as well as other factors. The only ground given by the State in the counter affidavit is that "after considering their cases sympathetically, keeping in view of the law and order situation they cannot be released". A bald statement like that without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted.

In fact there are no reasons why recommendations could not be accepted. We direct that the petitioners be released forthwith."

7. Herein also there is a bald statement without indicating as to how law and order is to be adversely affected. Therefore, in the absence of any other cogent material the assertions of these respondents cannot be believed.

8. For these reasons, I allow, the petition and direct that petitioner be released for four weeks" agricultural parole on his executing usual undertaking/bond to the satisfaction of District Magistrate, Panipat.