
(2010) 12 P&H CK 0656

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1568 of 2010 (O and M)

Kaptan @ Parveen

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-12-2010

Acts Referred:

Arms Act, 1959 — Section 25

Constitution of India, 1950 — Article 226

Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 — Section 3, 3(1)(c), 4, 6

Penal Code, 1860 (IPC) — Section 148, 149, 186, 302, 307

Citation : (2011) 1 RCR(Criminal) 751

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Advocate : A.S. Trikha, for the Appellant; Amandeep Singh, A.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Ram Chand Gupta, J.—The present petition has been filed under Article 226 of the Constitution of India read with Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short the "Act") for release of the Petitioner on agricultural parole.

2. Reply has been filed on behalf of Respondent-State. Custody certificate has also been produced and the same is taken on record.

3. I have heard learned Counsel for the parties and have gone through the whole record.

4. Admitted facts are that, Petitioner was convicted and sentenced to undergo imprisonment for life in FIR No. 264 dated 23.05.2003, under Sections 148/149/302/307/333/353/186 IPC and Section 25 of Arms Act, Police Station Civil Lines, Rohtak by learned Additional Sessions Judge, Rohtak vide order dated 11.08.2008. He filed appeal against the said judgment, which was dismissed by

this Court. Now Petitioner is undergoing the sentence in the District Jail, Narnaul. He has already undergone 7 years 5 months and 14 days of sentence excluding parole. He has undergone more than 2 years 4 months and 6 days of sentence after conviction. He has earlier availed parole of one week from 04.06.2009 to 12.06.2009 and for four weeks from 23.04.2010 to 22.05.2010 and one furlough of three weeks from 21.11.2009 to 13.12.2009. Request of the Petitioner for his release on agricultural parole was duly recommended by Superintendent, District Jail, Narnaul vide his office letter No. 2669-70 dated 07.06.2010 as the Petitioner was found entitled for the same as per the Act, the rules and the instructions. However, release of the Petitioner was rejected by the competent authority on the ground that land is owned by father of Petitioner and cultivated by the family.

5. Section 3 of the Act provides that a convict can be released on parole which reads as under:

3. Temporary release of prisoners on certain grounds.

(1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the official gazette 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 State Government is satisfied that.

(a) a member, of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister'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 or his father's undivided land actually in possession of the Petitioner.

(d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the grounds specified in Clause (a) of Sub-section (1), three 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 grounds specified in Clause (c) of Sub-section (1), six weeks; Provided that the temporary release under Clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed 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 State Government may, by notification, authorize any officer to exercise its powers under this section in respect of all or any other ground specified thereunder.

6. Further Section 6 of the Act provides for the grounds on which the parole can be refused, which reads as under:

6. Prisoners not entitled to be released in certain cases. - 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 authorized 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.

7. Bare perusal of Section 6 of the Act shows that release of Petitioner on parole can be refused only on the ground that the same is likely to endanger the security of the State or the maintenance of the public order. However, in the present case conduct of the Petitioner in the jail remained good. He is entitled for release on parole as per the rules, the Act and the instructions. The request of the Petitioner for his release on agricultural parole has not been declined on any of the grounds mentioned u/s 6 of the Act. Rather his request for his release on parole has been declined solely on the ground that the land is not owned by the Petitioner." However, the law is well settled that additional hand is always required for doing agricultural operations. The land is jointly owned by the family and the Petitioner is also a member of the family. In view of the fact that behaviour of the Petitioner in the jail remained satisfactory, it cannot be said that impugned order is justified on any of the grounds mentioned in Section 6 of the Act. Hence, the same cannot be sustained in the eyes of law.

8. Hence, in view of these facts, the present petition is allowed and the impugned order dated 06.08.2010, Annexure R2 passed by the competent authority refusing release of the Petitioner on agricultural parole is set-aside.

9. Respondents are directed to reconsider the case of the present Petitioner for his release on agricultural parole in the light of the observations of this Court made above, within a period of two weeks from the date of receipt of certified copy of this order.