

(1989) 08 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2297 of 1989 (O&M) and Criminal Miscellaneous Nos. 196 & 199 of 1989

Krishan Kumar

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Citation : (1989) 2 AICLR 569 : (1990) 1 RCR(Criminal) 13

Hon'ble Judges : A.P.Chowdhri, J

Advocate : H.P.S. Aulakh, Ashok Kumar, Mohinder Singla, Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. In a petition under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure the main prayer of the petitioner was grant of interim bail/emergency parole on the ground of serious illness of his wife who was admitted to the hospital. The averment regarding the illness of the wife was supported by affidavit of Manpal Singh Advocate, a relation of the petitioner, and medical certificate issued by the Medical Officer, General Hospital, Hansi.

2. In response to notice, appearance was put in on behalf of the respondents and the petition was adjourned twice for filing a reply. It was taken up on 29/1989 and again a prayer was made by the State for further adjournment. At that stage, learned counsel for the petitioner pressed for ad interim relief and the following order was passed

"Present : Mr. H.P S. Aulakh, Advocate, for the Petitioner. Mr. Narinder Kumar, Advocate, for the State.

No reply has been filed by the State. Learned counsel prays for more time. Meanwhile, petitioner applied for emergency parole in connection with illness of his wife. This is supported by Medical Certificate, Annexure P1, issued by the Medical Officer, General Hospital, Hansi. While adjourning the case to 30/8/1989, it

is directed that the prisoner Krishan Kumar son of Bhalle Ram now lodged in Central Jail, Hissar, shall be released under section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, for a period of four weeks on his furnishing bond and surety to the satisfaction of Chief Judicial Magistrate, Hissar. Dasti."

3. In pursuance of the above order, the petitioner was released on or about August 6, 1989.

4. Criminal Misc. No. 196 of 1989 was moved in the above criminal writ petition by Satpal, complainant in the main case under section 302 of the Indian Penal Code, for being added as a party. He also filed his affidavit by way of reply to the writ petition. He was permitted. In the reply, it was stated that the wife of the petitioner was hale and hearty and in any case she was not admitted to General Hospital, Hansi. In fact, the Senior Medical Officer, Incharge of the General Hospital, Hansi, had issued a certificate, Annexure R1, on the basis of the hospital record that petitioner's wife had not been an indoor patient during the period 2571989 to the date of issuing certificate i.e., 881989. It was further stated that the petitioner was a member of the joint family and his close relations including his brother were there to look after petitioner's family. It was also stated that the petitioner had secured release from custody with ulterior purpose of pressurizing the witnesses who were to be examined in the murder trial on 111989. In fact, he had given threat to the complainant i.e., Satpal and one eye witness Sanjay son of Jagdish Sahai Sharma. Jagdish Sahai Sharma, father of eyewitness Sanjay, had filed an affidavit regarding the above threat before the learned Sessions Judge, Hisar. Mr. Sharma had also lodged report to the said effect with the police. It was further stated that the petitioner had applied to the learned Sessions Judge, Hisar precisely on the ground of alleged illness of his wife. His prayer was declined by the learned Sessions Judge on two occasions by orders Annexure R2 dated 1701989 and Annexure R3 dated 2961989. In the order Annexures R2 the learned Sessions Judge expressed doubt about the genuine the ground of alleged illness of the petitioner's wife and in order Annexure R3 he pointed out that the main murder case was already fixed for trial for recording prosecution evidence for 191987 and no delay was likely to be caused.

5. In a rejoinder the petitioner stated that his wife was discharged from the hospital on 2571989 as there was no one to attend to her and her treatment continued and she had been ultimately referred to Medical College Hospital, Rohtak, for further investigation. He stated that hit parents and brothers were living separately from him and thus there was no other member of the family who could attend to his wife. He denied having given any threat to the petitioner or the eyewitness named Sanjay with the rejoinder, be filed three medical, certificates dated 15.6.1989, 2761989 and hospital slip dated 1881989. The first, two certificates are to the effect that the petitioner's wife remain in the hospital, as an indoor patient from 11.6.1989. She left the hospital sometimes thereafter

and was again admitted to the hospital on 23.6 1989 where she continued at least upto 27.6.1989. The medical slip shows that on that day petitioner's wife was seen by the doctor in the outpatient department and the doctor wrote on the slip that she was not improving in spite of treatment and accordingly referred her to the Medical College, Rohtak, for investigation. It may be mentioned here that the private complainant Satpal had filed the aforesaid application for being impleaded as a party on 14.9.1989 and notice of the said application was accepted by Mr. H.P.S Aulakh, counsel for the petitioner, on 18.8.1989. A possible inference is that it was not mere coincidence but the petitioner wanted to create some material that he took his wife to the hospital and obtained a reference for the medical college on 18.8.1989 the day when his counsel was served with application dated 14.8.1989.

6. After hearing the learned counsel for the parties, I am of the view that the petitioner has secured emergency parole by misrepresenting the facts and the parole deserves to be terminated.

7. There is in force in the State of Haryana the Punjab Good Conduct Prisoners' (Temporary Release) Act, 1962. A number of writ petitions have been filed by and on behalf of the prisoners whose prayer for temporary release on parole is turned down by the authorities envisaged under the Act. In the order dated August 2, 1989, reproduced above, there was a reference to the said Act. The order was passed in the presence of learned counsel for the petitioner. The learned counsel did nothing to remove the misunderstanding that the petition was one for bail in a pending case and it was not for release on parole. Even though it was mentioned in the petition that the petitioner was an undertrial having been arrested in a certain case on a given date. The overall tenor of the application was one for emergency parole and not a regular bail application. The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, expressly applies to the prisoners. The word 'Prisoner' is defined in section 2(d) to mean a person confined in prison under a sentence of imprisonment. In other words, an undertrial though sometimes described as undertrial prisoner is outside the purview of the aforesaid Act. Further, under section 3, prisoner undergoing imprisonment may be temporarily released on parole under section 3 and on furlough under section 4 of the Act. In other words, the parole is granted under the aforesaid Act and it has nothing to do with the case of an under trial prisoner. A reference to emergency parole made in the heading of the petition as well as in the paragraph relating to relief did, in fact, convey the impression that this was a case of parole on the ground specified in clause (a) of section 3(1) of the Act. Clause (a) relates to grant of temporary release on parole on the ground that a member of prisoner's family had died or was seriously ill. From the above discussion, therefore, it is plain that the petitioner conveyed a very misleading impression by the manner in which the petition was drafted and interim relief obtained.

8. Another significant fact which has emerged during the arguments is that the

petitioner's three successive bail applications dismissed by this Court. This fact is not disputed. Further, the significant fact is that the petitioner approached the learned Sessions Judge, Hissar, by two hi for the grant of interim bail on the same very ground, namely illness of his wife. Both these applications were declined by the learned Sessions Judge by orders, Annexure R2 and R3 filed with the reply by Satpal complainant. These were evidently material facts and it was expected that the petition will contain a suitable reference to these facts. The petitioner was thus guilty of suppression of material facts from the Court.

9. As pointed out above, it can be said on the basis of medical certificates placed on record by the petitioner that his wife got admitted to General Hospital, Hansi, on 1161989, left the hospital and again joined the hospital on 2561989. These dates broadly fell in a pattern when application was moved before the learned Sessions Judge, Hisar, for interim bail which was ultimately dismissed by two orders Annexure R2 and R3 dated 11761989 and 2961989. It further appears that as the purpose of admission of petitioner's wife to the hospital had not been served, she again left the hospital and she was not an indoor patient from at least the period 2571989 to 881989 vide Annexure R1 filed with the reply of the complainant in the main case. It may be recalled that the petitioner was granted interim parole by order dated 281989 and the material period for considering the illness of the wife was beginning of August. The certificate Annexure R1 shows that the petitioner's wife was not in the General Hospital, Hansi, during the period 2571989 to 881989. In fact, in the rejoinder the petitioner had not taken a stand that during the aforesaid period his wife had been shifted from the General Hospital, Hansi to some other hospital. All that he has stated is that she had left the hospital on 2571989 and she was under treatment apparently at her house. The petitioner came away on being released on parole on or about August, 6, 1989. It was expected that if the case set up by the petitioner were true he would have taken his wife to General Hospital, Hansi, or some other hospital or doctor for further treatment. In fact, what happened was that it was (only on 18.8.1989 that the petitioner's wife was shown in O.P.D. and a slip obtained referring her to medical college hospital, Rohtak. This was as stated above, after the complainant in the main case had moved a petition on 1481989 which had been served on counsel for, the petitioner on 1891989.

10. The above discussion renders the) alleged serious illness of petitioner wife open to serious doubt.

11. In the rejoinder, the petitioner has not controverted the fact that Sanjay 's father Jagdish Sahai Sharma had filed affidavit before the learned Sessions Judge, Hisar and had lodged a report with the police that his son who has an eyewitness in the case had been threatened by the petitioner. After careful consideration and for the reasons stated above, interim parole granted to the petitioner deserves to be terminated. I order accordingly. The petitioner shall surrender to his custody by tomorrow. The petition is hereby dismissed.