
(2010) 08 P&H CK 0108
In the Punjab And Haryana At Chandigarh

Mohd. Nazim

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 — Section 3, 3(1), 3(2), 4, 6
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15

Citation : (2010) 4 RCR(Criminal) 309

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ram Chand Gupta, J.—The present petition has been filed under Article 226 of the Constitution of India read with Sections 482 of Code of

Criminal Procedure and 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short the "Act") to quash the

impugned order dated 19.05.2010, Annexure P1 and to issue order to respondents to release the petitioner on house repair parole for four weeks

to enable him to conduct necessary repair of the house which is in dilapidated condition.

2. Reply has been filed on behalf of respondent-State.

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

4. Petitioner was convicted and sentenced to undergo R.I. for 15 years and to pay fine of Rs. 1,50,000/- and in default of payment of fine to

further undergo R.I. for one and half year in FIR No. 2 dated 02.01.2005, u/s 15

of Narcotic Drugs and Psychotropic Substances Act, 1985,

Police Station city Karnal by learned Special Judge, Karnal on 14.08.2006. However, in appeal the sentence was modified and it was reduced to

R.I. for 10 years and to pay a fine of Rs. 50,000/- and in default of payment of fine to further undergo R.I. for 6 months by this Court vide order

dated 06.11.2009. Petitioner has already undergone 5 years, 7 months and 16 days of sentence including undertrial period as on 19.08.2010. He

has not availed any type of parole after his conviction. Further admitted facts are that petitioner was granted four weeks of parole for house repair

by the District Magistrate, Bagpat (U.P.) and Commissioner, Rohtak Division, Rohtak in compliance with the order of this Court dated

18.11.2008 passed in CrI.Misc. No. 46382-M of 2007. However, petitioner could not furnish any surety within the stipulated period i.e. six

months from the date of issuing temporary release warrants vide endst. No. 13069-71 dated 15.12.2008 and hence, he could not be released. He

has availed temporary release only for one day to attend the marriage of his niece on 13.04.2008.

5. Petitioner has requested for parole for repairing his house. As he was entitled as per rules, Superintendent, District Jail, Karnal forwarded his

case to District Magistrate, Bagpat (U.P.) and however, he did not recommend the release of convict on parole and hence, the competent

authority has rejected his release on parole vide impugned order dated 19.05.2010, Annexure P1.

6. Section 3 of the Act provides that a convict 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, grand-daughter, 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.

7. 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.

8. Bare perusal of Section 6 of the Act shows that release of petitioner 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, the request of the petitioner for his release on parole has

been rejected on the ground that he is not having any source of income to repair the house, in which he used to reside. It has been stated by

Learned Counsel for the petitioner that petitioner used to reside with his "Mausi" (maternal aunt) since the time when he was four years of age.

Another ground taken is that he may indulge in criminal activities. However, the said report is without any basis and without any material

whatsoever. Hence, the ground on which the parole has been refused to the petitioner for which he is otherwise entitled as per the Act and rules, is

not based on any material and cannot be said to be in accordance with law and hence, the same cannot be sustained.

9. Hence, in view of these facts, the present petition is allowed and the impugned order dated 19.05.2010, Annexure P1 passed by the competent

authority refusing grant of parole to the petitioner is set-aside.

10. Respondents are directed to reconsider the case of the present petitioner for his release on parole in the light of the observations of this Court

made above, as per Act and Rules and on usual undertaking to be furnished by the petitioner, within a period of two weeks from the date of

receipt of certified copy of this order.

11. Disposed of accordingly.