

(2024) 04 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1708 Of 2024

Pawan Kumar

APPELLANT

Vs

State Of H.P. & Anr

RESPONDENT

Date of Decision : 08-04-2024

Acts Referred:

Citation : (2024) 04 SHI CK 0033

Hon'ble Judges : Tarlok Singh Chauhan, J;Sushil Kukreja, J

Bench : Division Bench

Advocate : George, Anup Rattan, Sharmila Patial, Guleria, Raj Negi

Final Decision : Allowed

Judgement

@JUDGEMENT- JUDGEMENT

Tarlok Singh Chauhan, J

1. The request made by the petitioner for releasing him on parole has been turned down by the respondents constraining him to file the instant petition for grant of the following substantive relief:

"that the Hon'ble Court may kindly be pleased to issue writ in the nature of mandamus, whereby the respondents and more particularly respondent No.2 may kindly be directed to release the petitioner on parole for a period of 30 days strictly in terms of the prescribed (Rules 1969) as framed under the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act 1968 (Rules 1969), so that the petitioner may be in a position to solve his personal as well as his family problems.

2 The respondents have placed on record instructions, which go to indicate that the sole ground on which the case of the petitioner has not been recommended by the District Magistrate is that upon release of the petitioner, he may disrupt law and order of the concerned area. However, there is no material whatsoever annexed by the respondents to show the basis on which they have expressed the

aforesaid apprehension.

3 The apprehension of the petitioner appears to have been garnered by the respondents solely on the basis of the petitioner having been convicted for a serious and heinous offence under Protection of Children from Sexual Offences Act, 2012, but this by itself does not make the petitioner a hardened criminal and this aspect of the matter has been dealt with elaborately by the Hon'ble Supreme Court in Asfaq vs. State of Rajasthan (2017) 15 SCC 55, the relevant observations whereof read as under:-

"11. There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations some of which may be as follows:-

- (i) member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or
- (ii) the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or
- (iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or
- (iv) it is desirable to do so for any other sufficient cause;
- (v) parole can be granted only after a portion of sentence is already served;
- (vi) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and
- (vii) parole may also be granted on the basis of aspects related to health of convict himself.

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.

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. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, albeit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

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. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

19. 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 threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in

mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform.

22. Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. 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. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct,

habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity etc.

23. There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. {See-Sunil Batra (II) v. Delhi Administration (1980) 3 SCC 488, Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248, and Charles Sobraj v. Superintendent Central Jail, Tihar, New Delhi (1978) 4 SCC 104.}

24. It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as "recidivism" reflects the fact that the correctional therapy has not brought in the mind of the criminal. It also shows that criminal is hardcore who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits." (Underlining ours).

4 The view taken by the Hon'ble Supreme Court has thereafter been followed by this Court in hundreds of decisions.

5 In the given facts and circumstances, we deem it appropriate to quash the order rejecting the parole of the petitioner and direct the respondents to release him on parole for a period of 30 days. Ordered accordingly. However, the same shall be subject to his furnishing personal bond in the sum of Rs.1 lac with two local sureties of the like amount, to the satisfaction of the Superintendent Jail, Model Central Jail, Kanda, (Shimla). The petitioner shall surrender before the aforesaid Superintendent immediately on expiry of four weeks of parole.

6 However, before parting, it is made clear that the parole granted to the petitioner shall be liable to be cancelled in case he breaches any of the conditions of the parole order and/or creates law and order problems, which shall be treated as a negative factor for consideration of his similar prayers in the future.

7 The instant petition is allowed in the aforesaid terms, so also the pending application(s), if any.