

(1985) 11 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Criminal Writ Petition No. 45 of 1985

Satish Chandra Tyagi

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:

Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 — Section 3
Penal Code, 1860 (IPC) — Section 302

Citation : (1985) 14 ILR HP 913

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Petition through Jail, for the Appellant; P.N. Nag, General, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C. J.

1. The Petitioner, who belongs to village Pursi, District Ghaziabad, Uttar Pradesh, is undergoing sentence of imprisonment for life for an offence u/s 302, Indian Penal Code, which was committed by him at Shimla. He is presently lodged in the Sub-Jail, Mandi.

2. The Petitioner applied for his temporary release on parole in or about July, 1985, on two grounds:

(a) that his wife was in family way and was due for delivery around September 15, 1985; and

(b) that his presence at his native place was required for agricultural operations.

The application was forwarded for remarks to the District Magistrate, Ghaziabad. The District Magistrate opposed the release of the Petitioner on parole, although the reasons on which the release was sought were found to be correct, on the basis of a report submitted to him by the Superintendent of Police, Ghaziabad.

The grounds on which such opposition was based were that the father of the Petitioner was alive, that he and other relatives of the Petitioner were looking after his wife as well as his ailing mother, that he being in the prime of his life and having been convicted for the offence of murder might once again indulge in criminal activity if released on parole and that he had already been twice released on parole and the last of such parole periods had expired only on July 12, 1985. The communication of the District Magistrate, Ghaziabad, was received in the office of the Inspector General of Prisons on August 30, 1985. When the papers were put up before the Inspector General of Prisons for orders he initially directed on September 5, 1985 that the Petitioner be released on parole for three weeks. Subsequently, however, he appears to have had a second thought and, accordingly, he issued directions on September 10, 1985, that a report be called for from the Sub-Jail, Mandi, with regard to the Petitioner's transfer to a Jail located in Uttar Pradesh. On September 12, 1985, a note was placed before the Inspector General of Prisons stating that the Superintendent of Jail, Mandi, had informed that the Petitioner had let it be known that he would get himself transferred to a Jail in Uttar Pradesh after he availed of the parole applied for. The Inspector General of Prisons thereupon directed that the Petitioner be advised to apply accordingly. On September 16, 1985, the office of the Inspector General of Prisons once again placed the parole case of the Petitioner for his consideration pointing out that it was the choice of the convict whether or not to apply for transfer to a Jail in Uttar Pradesh and that that matter could be independently dealt with. However, so far as the Petitioner's prayer for release on parole was concerned, the same was required to be decided since the period within which such applications were required to be dealt with had already expired. The Inspector General of Prisons recorded a note on September 17, 1985, desiring to know about the "conduct" of the Petitioner in the Nahan Jail where he was previously lodged and from where he was transferred on account of his "misconduct". The report of the Superintendent, Model Central Jail, Nahan, in connection with an incident which had occurred on July 15, 1985, while the Petitioner was lodged in that Jail, along with the report of the Executive Magistrate, HAS (Prob), Nahan was thereupon put up before the Inspector General of Prisons on September 17, 1985. Upon perusal of the report, the Inspector General of Prisons, on September 18, 1985, directed that the parole of the Petitioner be rejected "for the time being". The intimation with regard to the rejection of his parole reached the Petitioner on September 27, 1985.

3. The present petition dated October 29, 1985, made by the Petitioner and duly forwarded by the Jail authorities was received and put up for orders before one of us (Chief Justice) on October 31, 1985. On the same day, directions were issued for the registration of the petition as Criminal Writ Petition. Affidavit-in-reply dated November 23, 1985, of the Deputy Inspector General of Prisons was presented in the Court on November 26, 1985. On the same day, directions were issued that the original record relating to the processing of the case of the Petitioner for being released on parole should be produced for the perusal of the

Court on November 28, 1985. The petition having reached final hearing today, it is being disposed of by this judgment.

4. It would be convenient, at this stage, to mention a few other facts. In the first place, the Petitioner was earlier released on parole on two occasions. On the first occasion, the period of temporary release was from December 10, 1984 to January 20, 1985 and, on the second occasion, the temporary release was for the period from June 1, 1985 to July 12, 1985. The grounds for release on parole on both the occasions were for the treatment of his ailing mother and carrying out agricultural operations. It is not clear whether, on the first occasion, the grant of parole was opposed by the district administration of Ghaziabad. On the second occasion, however, the proposal to release the Petitioner on parole was resisted by them on the ground that he was a person with a criminal mind and that he could indulge in criminal activity if he was released on parole. In spite of an adverse report to the aforesaid effect received from the district authorities of Ghaziabad, the Petitioner was released on parole on the second occasion taking into consideration the fact that no adverse report was received about his conduct during the first period of temporary release. Even during the second period of the Petitioner's release on parole, he is not found to have indulged in any activity prejudicial to the public order or even to have committed any offence since no such adverse report was received from the district authorities of Ghaziabad. In the report submitted by the said authorities on the present occasion, there is no mention about any such activity on the part of the Petitioner. In the next place, the Petitioner appears to have been transferred from the Model Central Jail, Nahan, to the Sub-Jail, Mandi, pursuant to some incident which appears to have taken place in the former Jail on July 15, 1985, in the course of which the Petitioner is alleged to have behaved like a drunkard and to have created nuisance along with other inmates of the Jail and to have raised slogans and refused to go to the barrack/cell. It is pertinent to note in this connection, however, that an enquiry was conducted by the Executive Magistrate, HAS (Prob), Nahan, into the said incident. The original report of the said enquiry was perused by the Court. The report reveals that on July 15, 1985, all the prisoners of the Model Central Jail, Nahan, were standing outside the internal gate of the Jail and were shouting slogans against the Superintendent of the Jail. When the Executive Magistrate asked them to explain their problems to him, the prisoners explained that they had been beaten up by the Jail staff and that one of the prisoners, who was assigned duty in the office of the Superintendent of the Jail, had been intentionally kept out of the Jail till late hours of the night; The Executive Magistrate had found injuries on the persons of some of the inmates of the Jail. The report submitted by the Executive Magistrate after holding an on-the-spot enquiry on the same day refers to an agitation on the part of all the prisoners and does not name the Petitioner as the sole agitator or a ring leader. Besides, there is no mention in the report about the petitioner having behaved like a drunkard or having created nuisance as alleged by the Superintendent of the Jail in the course of his own report. There is no dispute that except

transferring the Petitioner from the Model Central Jail, Nahan to Sub-Jail, Mandi, no other action has been taken against him. He has not been dealt with in accordance with the Punjab Jail Manual for having committed any Jail offence. No Jail offence is even shown to have been committed by the Petitioner and no adverse report against him, other than the one mentioned above, is shown to be on the Jail record.

5. In *Kesar Singh Guleria v. State of H. P. and Ors.* ILR 1984 HP 563, this Court has considered in detail the underlying purpose, scope and ambit of the provisions relating to the temporary release of a prisoner on parole. In paragraph 10 of the decision it is observed that the relevant statutory provisions relating to the release of a prisoner on parole or furlough, as the case may be, recognise that the man behind the bars is still the member of his family and society, that he has . yet the same human wants, urges, duties and obligations and that the rehabilitative purposes of sentencing would be promoted by permitting him to fulfil those basic human needs and filial and social duties by occasionally permitting him to live for short periods in his home as well as in the community where he has his roots. Parole is, therefore, permissible to any prisoner, with a record of good conduct in Jail subject to certain limitations and conditions, if it is established to the satisfaction of the Releasing Authority that a member of the prisoner's family has died or is seriously ill, or that the marriage of his son or daughter is to be celebrated, or that his temporary release is necessary for carrying on agricultural operations on his land since no friend or member of his family is prepared to render him any assistance in that behalf in his absence. The residuary ground for release on parole, namely, that it is desirable so to do for any other sufficient cause, entrusts the Releasing Authority with a wide discretion which has to be exercised with circumspection and in a just manner, according to common sense and sound judgment, so as to advance the remedy and to effectuate the object. Parole to a prisoner should be granted in the exercise of such discretion on any occasion or in any situation in which his being in the midst of his family, community or society could be regarded as essential or even desirable on any good and valid ground. These various grounds indicate that the law on the subject of parole recognises that incarceration should not lead to the prisoner's total obfuscation from the family or community and ensures his continuing participation, tailored to considerations of public order and security and subject to reasonable restrictions, in the affairs of his family and society. In paragraph 11 of the said decision, it has been pointed out that though the relevant statutory provision, namely, Section 3 of the Himachal Pradesh Good Conduct Prisoners' (Temporary Release) Act, 1968 (hereinafter to be referred as "the Act") uses the expression "may" in the context of the exercise of power of temporary release and thereby confers discretion on the Releasing Authority, such discretionary power is coupled with the legal duty to exercise the same once the conditions for its exercise are shown to exist. The exercise of power of releasing a prisoner on parole must not, therefore, be looked upon as an act of charity, compassion or clemency but as an act in the discharge of a legal duty

required to be performed upon the fulfilment of the prescribed conditions to effectuate a salutary purpose. A project oriented approach keeping in view the above stated object and purpose of the enactment must govern the exercise of such discretion. The discretion must, therefore, be exercised in a just and reasonable manner and in conformity with the apparent purpose of the enactment and it must avoid leading to some inconvenience, absurdity, hardship or injustice which must be presumed not to have been intended by the statute. In para 13, it has been observed that the District Magistrate, who is under a statutory duty to give an opinion whether the temporary release of a prisoner on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the security of the State or prejudicial to the maintenance of public order, must bear in mind the clear distinction between the concepts of "security of the State", "public order" and "law and order". "Security of the State" would involve breaches of public tranquility leading to national upheavals, such as revolution, civil strife, war etc. and cover any activity affecting the security of the State. "Public Order", if disturbed, must lead to public disorder. A mere disturbance of law and order leading to disorder is not the same as disturbance which subverts the public order. An apprehended breach of peace or the possibility of the prisoner committing a crime during the parole period, without anything more, would constitute a law and order problem and not a problem touching public order. In cases involving problems of law and order, the proper course to be adopted is not to give an opinion that the request for release be rejected but to advise that the release be ordered subject to appropriate conditions, such as, that surveillance be kept over the prisoner during the period of his temporary release and that he be asked to report to the nearest police station at appropriate intervals. The Petitioner's application for temporary release was required to be considered by the competent authority against the aforesaid background of law as declared by this Court.

6. Now, in the present case, the Petitioner was twice released on parole earlier. On both those occasions, the Petitioner had gone to his native place. On none of those two occasions, he is shown to have indulged in any act involving breach of public order. Even no complaint of breach of law and order was received against the Petitioner. We have perused the original report submitted by the Superintendent of Police, Ghaziabad to the District Magistrate, Ghaziabad and found that besides expressing a vague apprehension with regard to the possibility of the Petitioner indulging in a criminal act if he was to be released on parole. He has not supported his opinion by any concrete instances or reasons. Indeed, the distinction between the concepts of "public order" and "law and order" has been totally lost sight of while making the report. Besides, inspite of such adverse report, the Petitioner was released on parole on a previous occasion, and rightly so, since such report being purely conjectural has no value. Under the circumstances, the report of the district authorities of Ghaziabad, could not possibly have been acted upon for the purpose of rejecting the application for parole made by the Petitioner. Be it stated that the grounds on

which he sought parole are found to be correct.

7. The ground which appears to have weighed with the competent authority, however, is the Petitioner's alleged "misconduct" while he was lodged in the Model Central Jail, Nahan, in connection with the incident which is alleged to have occurred on July 15, 1985. As pointed out earlier, the report of the Executive Magistrate, Nahan, who had immediately visited the Jail after the alleged incident, does not bear out the version of the Superintendent of Jail, Nahan, in regard to the conduct of the Petitioner. The Petitioner is not even specifically mentioned in the report. There is not even a hint that he was the person who was responsible for instigating the trouble, if any, or an active participant therein. The report also reveals that there was a spontaneous outburst by all the inmates of the Jail who had certain grievances against the Jail administration. If the Petitioner was really guilty of a specific misconduct, he should have been dealt with in accordance with the provisions of the Punjab Jail Manual for having committed a Jail offence. No steps are shown to have been taken against him in that direction. Vague suspicions or unfounded allegations cannot take place of proof. In view of the foregoing, we do not think that the involvement, if any, of the Petitioner in the above-mentioned incident along with Ors. could have been reasonably pressed into service against him.

8. One more ground which has been trotted out in the affidavit-in-reply as having weighed with the competent authority is that in the recent past the Petitioner was twice released on parole. In the first place, a perusal of the original record shows that this ground has, in fact, not influenced the decision of the competent authority. The validity of the impugned order must be judged by the reasons revealed by the record and not by fresh reasons supplemented by affidavits or otherwise (See: Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, In the next place, there is no restriction against the release of a prisoner on parole, if genuine grounds therefore exist, even if such release is applied for more than once and successively. If there are genuine grounds, as in the present case, the prisoner may have to be released on parole successively and at short intervals, unless there are other valid grounds. We do not think, therefore, that this ground can be pleaded for denying parole.

9. The question then is as to what relief should be granted to the Petitioner. True it is that one of the grounds on which the parole was applied for might be regarded as having become somewhat stale. If the Petitioner's wife was due to deliver a child on or about September 15, 1985, the delivery must have taken place by now. As regards the ground pertaining to the agricultural operations, the same cannot be regarded as stale since, the agricultural season is still not over. In any case, the Petitioner is not to blame for the situation now obtaining. He applied for parole well in advance in July, 1985 and orders in respect thereof came to be passed as late as September 18, 1985. Meanwhile, the date on which his wife was expected to deliver a child had expired. This aspect cannot be over

looked. The conduct of the Petitioner in making the subsequent application, which he appears to have made to the Inspector General of Prisons on October 29, 1985, and in instituting this petition, reveals that the Petitioner is still anxious to be released on parole. It is presumably his natural human urge to be with the wife in the post-natal period and to see his child, if the delivery has been successful, which appears to have prompted him to pursue the matter. Besides, the Petitioner also appears to be anxious about the condition of his old parents and especially of his ailing mother. Having regard to all the circumstances of the case, there is no reason why on just and humane considerations the temporary release of the Petitioner on parole should not be ordered even now.

10. For the foregoing reasons, the writ petition is allowed. The Petitioner shall be released on parole for the period for which he has prayed, namely, forty-two days, on the terms and conditions on which he was so released on the previous occasions. The order releasing the Petitioner on parole shall be passed within twenty-four hours and the Petitioner shall be forthwith thereafter released pursuant thereto.

11. Rule made absolute accordingly.

12. Before parting with the case, the Court would like to observe that there has been an avoidable delay in processing the Petitioner's application for parole. Even ignoring the delay which occurred at the end of the district authorities of Ghaziabad in submitting the report, in view of the fact that the local jail authorities have no control over them, there is no justifiable reason for the delay which occurred after the receipt of the said report on August 30, 1985 till the decision on the parole application was taken on September 18, 1985. In *Lall Chand v. State of Himachal Pradesh and Anr.* Criminal Writ Petition No. 4 of 1984, decided on April 18, 1984, and in *Kesar Singh Guleria's* case (*supra*), the Court has issued peremptory directions in this regard. The Inspector General of Prisons, if he is himself the releasing authority, is thereunder required to arrive at a decision with regard to the grant of parole within a period of 3 days from the date of the receipt of the recommendation from the District Magistrate. In cases of urgency, such as, when parole is asked for on the ground of death or serious illness, the application is required to be processed with still greater expedition so that if ultimately parole is granted, the object and purpose behind seeking the parole is subserved. These directions issued in such clear and specific terms do not still appear to have made any impact on the competent authority as the facts of this case reveal. A period of as many as 17 days, even after the report of the District Magistrate was received, was spent in arriving at a decision whether or not to grant parole to the Petitioner. The points on which the competent authority sought clarification could not have justifiably consumed such a long period if due despatch was shown in light of the law declared by this Court in *Lall Chand's* as well as in *Kesar Singh Guleria's* cases. The Court need not impress upon the competent authority that it is its bounden duty to obey the directions issued by

this Court in exercise of the judicial powers vested in it by the Constitution and that the Court has the power to enforce its decree in case it finds a wilful breach or gross negligence tantamounting to wilful breach of such duty. Be it realised that under the scheme of our Constitution, the judicial organ of the State is the final arbiter of the disputes between the parties and that it is the bounden duty of all and, more particularly, of the Government, its officers, subordinates and servants not only to learn to respect but also to dutifully implement the judicial verdict in its letter and spirit. The Court administers a caution that any such lapse coming to its notice in future will not receive a liberal treatment inasmuch as persistence in such conduct is not expected from public authorities who are to exercise greater discrimination and care and the Court would be failing in its duty if it omits to take serious notice of such repeated "instances.