
(2021) 03 SHI CK 0187
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4525 Of 2020

Satish Kumar

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 23-03-2021

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15

Citation : (2021) 03 SHI CK 0187

Hon'ble Judges : L. Narayana Swamy, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Gobind Korla, Rajiv Sharma, Ashok Sharma, Adash Sharma, Ritta Goswami

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Prayer of the petitioner is to grant him parole for a period of 28 days.
2. The petitioner was convicted by the learned Trial Court for an offence punishable under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, (for short Act) and sentenced to undergo rigorous imprisonment for a period of 10 years alongwith fine of Rs. One lac. The conviction of the petitioner was upheld by this Court in Criminal Appeal No. 385 of 2015, decided on 22.09.2016. Petitioner has completed more than six years of imprisonment at present.
3. Pursuant to a judgment passed in CWP No. 835 of 2019 decided on 25.07.2019, petitioner was released on parole for a period of two weeks. Ground for releasing the petitioner on parole was to enable him to carry out repair work of his house in Mazaffarnagar U.P. Petitioner again requested for release on parole on the ground that the repair of his house had not been completed and that his wife being seriously ill and his three daughters are not in a position to carry out required repairs. Therefore, he emphasized that his presence was essential for renovating/repairing the house.

4. The request of the petitioner for release on parole was forwarded by the respondents to the District Magistrate Muzaffarnagar Uttar Pradesh, who turned down the prayer on 26.02.2020 and thereafter on 29.7.2020. The assigned reason for rejecting the request of the petitioner was that "petitioner may involve in criminal offence or he may abscond" and that 'repairs can be got carried out by the wife of petitioner. Petitioner can violate the parole conditions'. Respondents accordingly rejected the request of the petitioner for his release on parole. It is in this background, the petitioner has approached this Court by way of the instant writ petition.

5. We have heard learned counsel for the parties and gone through the records.

6. The reasons given by the District Magistrate for rejecting petitioner's prayer for release on parole are not borne out from the records. As already observed, the petitioner was released on parole earlier in the year 2019. There is no report that he involved himself in criminal activities or he had absconded. In fact, the District Magistrate while rejecting the case of the petitioner on 26.02.2020 has also observed that the conduct of the petitioner while on 14 days parole in 2019 was found satisfactory. The request of the petitioner is for release on parole for carrying out repair work of the house. It is also not in dispute that the house of the petitioner has still not been repaired completely.

Learned Additional Advocate General has fairly submitted that since instant was the second request of the petitioner for release on parole, therefore, the application of the petitioner was not even required to be sent to the District Magistrate Muzaffarnagar U.P. Reference in this regard has been made to following Rule (3) of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Rules, 1969:-

"(3) The District Magistrate, while recommending the parole/ furlough cases of Prisoners will specify whether the prisoner shall be required to furnish the security bond or personal bond or both. He shall also indicate the amount of such bond(s) with due regard to the circumstances of cases. Such amount shall not in any event be excessive and shall not be mechanically fixed. While recommending release of the prisoner on his furnishing a personal bond, his family ties and relationships, his reputation, character and monetary conditions and his roots in the community shall be taken into consideration.

If after making such enquiry as it may deemed fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form 'B' ordering the temporary release of the prisoner, specifying therein, (1) the period of release of the prisoner, (2) the place or places which the prisoner is allowed to visit during the period of such temporary release and the amount, as may be specified by the District Magistrate for which the security bond or personal bond shall be furnished by the prisoner in Form 'C' or 'D' respectively.

In case of second and subsequent release on parole/furlough the Releasing Authority shall be competent to order release of the prisoner on the recommendation of Superintendent of Jail concerned provided that the convict/prisoner maintained good behaviour during the previous release(s) and nothing adverse was reported against him..."

7. Considering all the above attending facts and circumstances of the case and the applicable legal position, we deem it proper to allow this writ petition by directing the respondents to release the petitioner on parole for a period of 28 days subject to the following conditions:-

(i) Upon release, the petitioner shall be escorted by two police constables with a warrant for his surrender before the District Magistrate, Muzaffarnagar;

(ii) Upon the petitioner surrendering before the District Magistrate, Muzaffarnagar, he shall take a personal bond from the petitioner and issue appropriate instructions to the Station House Officer of Police Station Shahpur, District Muzaffarnagar to make arrangements for the petitioner to report everyday at 10.00 a.m. either in the Police Station or at the Police Post of the Village, whichever is nearer to his residence. On the 28th day after his release, the petitioner shall again report before the District Magistrate Muzaffarnagar. On the said day, the Constables so accompanied him, shall pick up the petitioner from the office of the District Magistrate Muzaffarnagar and bring him back to the Central Jail.

The instant petition stands disposed of in the above terms, so also pending application(s), if any.

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