
(2010) 04 P&H CK 0143
In the Punjab And Haryana At Chandigarh

Varun @ Gullu and Satyawan

APPELLANT

Vs

State of Haryana and Others
 Sandeep Kumar and
Raman Kumar @ Gora Vs State of Punjab and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 107, 151

Citation : (2010) 04 P&H CK 0143

Hon'ble Judges : Jaswant Singh, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—This order shall dispose of afore mentioned four petitions. The confined in jails either in State of Punjab or in State of Haryana. They have sought parole, inter alia, for the purpose of meeting their family members or for carrying agriculture operations. In Criminal Misc. No. M-4467 of 2010, the prayer is for furlough. Such request have been declined for the reason that there is apprehension of breach of peace or that there are chances of committing unwarranted incident with the complainant family.

2. Learned Counsel for the petitioners have vehemently argued that under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short "the Punjab Act") or the Rules framed there under or Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short "the Haryana Act") and the Rules framed, the request for parole or furlough can be declined only if such release is likely to endanger the security of the State or maintenance of public order. Therefore, the reasons given by the competent authority to decline the requests for parole or furlough are not sustainable in law. It is argued that the competent authority are passing stereo-typed orders, without application of mind and without satisfying itself the pre-requisite conditions for declining the requests for parole or furlough as contemplated u/s 6 of the Punjab and or Haryana Act. It is argued that the factors which are to be taken into consideration for release of a prisoner on parole or furlough have been

considered and explained by this Court from time to time, but the parameters delineated in the judgments of this Court have been followed in its breach only. It is argued that the punishment imposed on a prisoner has a dual object of being deterrent to the citizens as well as to reform a prisoner so that he returns to civil society after he completes his term of imprisonment. Denial of parole amounts to denial of an opportunity to return to the civil society as brief spells of parole and furlough provides an opportunity to a prisoner to adjust in the civil society while staying with the members of his family. Long absence from the civil society can lead to depression and frustration in the mind of a prisoner and, therefore, parole or furlough should be granted as a rule to avoid such mental and physical condition of a prisoner. The parole or furlough should be declined only in exceptional circumstances and the reasons to decline parole or furlough should be available in the order. Reliance is placed upon *Balwant Singh v. State of Punjab* and Anr. 1988 (2) RCR (Criminal) 431, *Subhash v. State of Haryana* and Anr. 2004 (2) RCR (Criminal) 491, *Sat Pal v. State of Haryana* 1995 (1) RCR (Criminal) 140, *Rai Singh v. State of Haryana* 1996 (1) RCR 218 (P&H), *Mani Ram v. State of Haryana* 1997 (1) RCR 197 (P&H) and *Kulwant Singh v. State of Punjab* and Ors. 2004 (1) RCR (Criminal) 365.

3. On the other hand, learned Counsel for the respondents have placed reliance upon the judgment of this Court reported as *Amar Singh v. State of Punjab* ILR 1984 P&H 117 to contend that parole or furlough contemplated to be granted under the Act, is a concession and no prisoner can claim parole or furlough as a matter of right. Therefore, the assertion of the petitioners that they are entitled to be released on parole or furlough is not tenable.

4. The Punjab Good Conduct Prisoners" (Temporary Release), Rules, 1963 (for short "the Punjab Rules") have been framed in exercise of rule making power under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. In the State of Haryana, the applicability of the said Act has been repealed by The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. The Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for short "the Haryana Rules") have been notified on 18.12.2007 under the Haryana Act. Prior to publication of the Haryana Rules, a notification was issued by the State Government on 30.7.2007 authorizing Divisional Commissioner of the concerned Division to exercise powers of the State Government in respect of prisoners convicted for the offences of murder, dacoity, rape, rape with murder, dowry death cases and NDPS Act. Superintendent of Jails were authorized to exercise the powers of the State Government in respect of grounds specified in Clause (a) of Sub-section (1) of Section 3 of the said Act i.e. in the release of a prisoner on parole in the event of death of a near family member. In all other cases, the District Magistrate was authorized to exercise the powers under Sections 3 and 4 of the Haryana Act. The Haryana Act is the liberalized version of the Punjab Act, though the provisions are substantially identical. The same are reproduced below:

The Punjab Good Conduct Prisoners (Temporary Release), Act, 1962:

The Haryana Good Conduct Prisoners (Temporary Release), Act, 1988 :

3. Temporary release of prisoners on certain grounds : (1) The State Government may, in consultation with the District Magistrate 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

(b) the marriage of the prisoner'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 and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence;

(d) it is desirable to do so for any other sufficient cause.

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4. Temporary release of prisoners on furlough : - (1) The State Government or any other officer authorized by it in this behalf may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than five years, and who -

(a) has, immediately before the date of his temporary release undergone imprisonment for a period of three years, excluding remissions; and

(b) has not during such period committed any jail offence and has earned at least three annual good conduct remissions;

Provided that nothing herein shall apply to a prisoner who -

(i) is a habitual offender as defined in clause (3) of section 2 of the

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, granddaughter, 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 prisoner; or

(d) it is desirable to do so for any other sufficient cause.

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4. Temporary release of prisoners on furlough (1) The State Government or any other officer authorized by it in this behalf may, in consultation with such other officer as may be appointed by the State Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who -

(a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the pre-sentence detention, if any;

(b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned at least three annual good conduct remissions;

Provided that nothing herein shall apply

3. Procedure for temporary release -

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(2) The Superintendent of Jail shall forward the application alongwith his report to the District Magistrate, who after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the Inspector General. The Inspector General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the security of State or prejudicial to the maintenance of public order.

3.(1)

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate who shall forward the case with his recommendations to the Director General for Grant of parole or otherwise. 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:-(i) the period of release; (ii) the place or places which the prisoner is allowed to visit; and (iii) the amount of surety bond.

4.(1) A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good remission under the Act. (2) A prisoner, who has been convicted and

sentenced for imprisonment less than four years, shall not be eligible for parole.

8. u/s 3(1)(d) "sufficient cause" may be considered from amongst the following reasons, namely:

1. admission in school/college/professional institutions of the dependents of the convict:

(ii) Medically scheduled delivery of wife of the convict;

(iii) House repairs/new construction of house owned by the convict. Parole for house repair shall be granted only once in three years;

(iv) Marriage of prisoner's brother's son or daughter to be celebrated in case his brother is not alive.

5. Section 6 of both the Statutes as reproduced specifies the reasons for declining the parole or furlough. The reasons are that when the release of a prisoner is likely to endanger the security of the State Government or the maintenance of public order. The provisions reproduced further show that instances of "sufficient cause" appearing in Section 3(1)(d) of the Haryana Act have been enumerated in Rule 8 of the Haryana Rules, but there is no corresponding Rule in relation to the provisions applicable in the State of Punjab. Still further time-limit for deciding the claim of a prisoner for release on parole or furlough has been specified by State of Haryana in its circular dated 7.4.1999, whereas there is no such corresponding instruction in the State of Punjab has been brought to our notice.

6. No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by a statute and on fulfillment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act can not act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

7. In the cases, which have come up earlier before this Court as per judgments referred to by the learned Counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated u/s 6 of the Act.

8. We find that the authorities under the Act have been consistently declining the request for parole or furlough only for the reason of apprehension of breach of

peace, whereas there is no such condition under the Act. This is so in spite of numerous judgments of this Court that apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough.

9. In Balwant Singh's case (supra), it was held to the following effect:

I do not think it fair for the police authorities to base their report on her solitary statement that his release would be dangerous to public peace. The report of the District Magistrate, Amritsar which alone is relevant is not based on any data or material. No attempt has been made by him to show as to how law and order is likely to be adversely affected by the release of the petitioner on furlough. He has simply stated that verified through Senior Superintendent of Police, Amritsar and village Panchayat, reason of leave are not correct. No reasons are provided under the Act for release on furlough although reasons are provided for release on parole. District Magistrate, Amritsar, did not apply his mind to the facts of the case and just dittoed the report of the Senior Superintendent of Police, Amritsar, without application of mind. Danger to any individual or individuals does not even negate legal entitlement of a person under the Act. The opinion of the Releasing Authority, therefore, cannot be justified.

10. In Joginder Singh v. State of Punjab and Anr. 1988 (2) RCR 548 it has been held that the expression "Security of State" and "Public order" has the same meaning as interpreted by the Hon'ble Supreme Court while considering Article 19(2) of the Constitution of India in Romesh Thappar Vs. The State of Madras, and Dr. Ram Manohar Lohia Vs. State of Bihar and Others, . The following is the relevant extract:

6. The preamble of the Act lays down that the Act was enacted for the temporary release of prisoners for good conduct. The broad aim of the Act, therefore, is to provide an incentive to prisoners to be of good conduct while undergoing sentence of imprisonment....

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A key to the scheme of the Act is provided by Section 6, where satisfaction of the State Government or the releasing authority is expressly limited to endangering security of the State and maintenance of public order. The expressions "Security of State" and "Public Order" occur in Article 19(2) of the Constitution. These expressions have been the subject matter of Judicial Consideration and they have acquired a precise meaning. Thus, security of the State is endangered by crimes of violence, intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, but not by minor breaches of public peace or tranquility, such as unlawful assembly, riot, affray, rash driving, promoting enmity between classes and the like (vide Romesh Thappar Vs. The State of Madras, . The concept of "public order" must be distinguished from the popular concept of "law and order" and of "security of the State". They refer to three "concentric circles". Law and order represents the largest circle, within which is the next circle representing public order and the

smallest circle represents security of the State (vide Dr. Ram Manohar Lohia Vs. State of Bihar and Others, . Hence, an activity which affects "law and order" may not necessarily effect public order and an activity which may be prejudicial to public order may not necessarily endanger security of the State. The twin grounds of endangering security of State and public order may or may not be exhaustive of the grounds for refusing temporary release, but these grounds go a long way to suggest that grounds for refusal must be these and like grounds....

11. This Court in the aforesaid judgment referred to Rakesh Kaushik v. B.L. Vig, Superintendent, Central Jail, New Delhi and Ors. AIR 1981 Supreme Court 1767 and held that a prisoner or detenu is not stripped of his fundamental or other legal rights when he is undergoing imprisonment. The Court further relied upon Francis Coralie Mullin v. Administration of Union of Territory of Delhi and Ors. AIR 1981 Sc 746 to hold to the following effect:

...One of these rights is of personal liberty. Personal liberty would include the right to socialize with members of the family and friends, subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21 of the Constitution. (Francis Coralie Mullin, supra). A long period of incarceration where a person is cut off from the establishing influence of the family tends to brutalize the prisoner and blunt his finer sensibilities so that the end product may perhaps be more criminal than the one at the point of entry in the jail. The aforesaid observations made by the highest Court of the country apply with equal force to the case under consideration. This then is the philosophy underlying the Act.

12. Recently, a learned Single Judge of this Court in Kulwant Singh's case supra relied upon Joginder Singh's case (supra) and held that the claim of the petitioner for release on parole could not have been rejected on the ground that his release was likely to result into breach of peace and law & order.

13. Apart from the aforesaid judgments, there are numerous judgments of this Court, wherein the orders declining parole or furlough for the reason that there is apprehension of breach of peace have been found to be unsustainable. We are not referring to such judgments for the sake of brevity. However, a judgment of Himachal Pradesh High Court dealing with the question is relevant to which we would make a brief reference. In Kesar Singh Guleria Vs. The State of Himachal Pradesh and Others, , a Division Bench of Himachal Pradesh High Court referred to Sunil Batra Vs. Delhi Administration and Others etc., , and observed that the right to the visit and the society of spouse, offsprings, parents and other family members cannot be denied in light of Article 19 of the Constitution. Subject to considerations of security and discipline, liberal visits by family members, close friends and legitimate callers has been declared to be a part of the prisoner's kit of rights which must be respected. It was further held to the following effect:

10. Parole and furlough, in principle and practice, are the other side of the same coin, for the temporary release of a prisoner is primarily intended to subserve the same purpose. The relevant statutory provisions relating to the release of a prisoner on parole or furlough, as the case may be recognize 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 purpose 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

...Be it realized that unlike temporary release on parole, release on furlough is not dependent upon the existence of any specified grounds. The power is advisedly conferred in such wide terms with the purposive object of facilitating the rehabilitative process of a prisoner with a good conduct record, who is not a habitual offender and who is undergoing a long term of imprisonment for offences other than those statutorily specified, by giving him an opportunity to have a happy reunion with his family for short periods at regular intervals and to revive contacts with and to generate confidence in the society in which he has his roots. The furlough power recognizes that a sullen and forlorn prisoner cut off from the family and society for a long period is prone to make a more dangerous criminal and that such intermittent bouts of temporary release from incarceration may soften his criminal proclivity.

14. Referring to the grounds for declining parole, the Court proceeded to held as under:

13. ...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. It would thus appear that "public order" comprehends disorder of lesser gravity than those affecting "security of the State" and that "law and order" comprehends disorders of lesser gravity than those affecting "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 advice 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 asked to report to the nearest police station at appropriate intervals. Indeed, in appropriate case, the power conferred by R. 4 can be recommended to be exercised if an occasion therefore arises, having regard to the conduct of the prisoner who is temporarily released.

15. A perusal of the provisions of the statute reproduced above would show that right to seek temporary release on parole is available to a prisoner on happening of specific eventualities and to meet out certain exigencies. A prisoner becomes

entitled to furlough u/s 4 of the Act on completion of specified period of incarceration. Such release on furlough is without any condition or exigency required to be satisfied by a prisoner for release on parole contemplated u/s 3 of the Act. Parole or furlough have different objectives to achieve. The considerations for release on parole or furlough are distinct though the reasons for declining request are common as are specified u/s 6 of the Act. A prisoner can be released on parole, if he has undergone continuous imprisonment for a period of three years and has not committed any jail offence and has earned at least three annual good conduct remissions and for the reasons mentioned in Section 3 of the Act whereas the specified category of prisoners are entitled to furlough on completion of specific period and on fulfillment of preconditions. Such release is not for any specific reason or purpose but to provide any opportunity for rehabilitation of the prisoner with civil society after completion of his term of imprisonment.

16. On the other hand, if a prisoner satisfies the conditions of Sub-clause (a), (b) and (c) contemplated under Sub-section (1) of Section 3, the release of a prisoner on parole is to be accepted unless such release endangers security of the state or public order. In cases falling under Clause (d) i.e. for release of a prisoner on parole for a sufficient cause, provides flexibility in the discretion of the releasing authority for release of a prisoner on parole. Such flexibility is also circumscribed by Section 6 of the Act. Apprehension of breach of peace can be dealt with by the State by invoking other provisions of the statute such as Sections 107 and 151 of the Code of Criminal Procedure and other modes as noticed by Himachal Pradesh High Court in Kesar Singh's case *supra*, the view with which we entirely agree. Similarly, we agree with the view of this Court in Joginder Singh 's and Kulwant Singh 's cases (*supra*). Therefore, the rejection of the claim of a prisoner for the reason of apprehended breach of peace, is unwarranted, untenable and is result of non-application of mind.

17. In view of the above, we set aside orders dated 11.8.2009 in Criminal Misc. Nos. M-34013 of 2009, 27.8.2009 in Criminal Misc. No. M-1777 of 2010, 27.8.2009 in Criminal Misc. No. M-1813 of 2010 and 25.8.2009 in Criminal Misc. No. M-4467 of 2010.

18. Since large numbers of applications are received by the authorities, the time limit fixed by the State of Haryana for processing the request for parole/furlough vide circular dated 7.4.1999 should be strictly followed by it. It contemplates that a request for parole shall be processed by District Magistrate within 21 days, Superintendent Jail within 05 days and Director General of Prisons within 10 days. The time limit provided under the said circular should be followed by the State of Punjab as well as it seems to be fair and reasonable. The Punjab State is however at liberty to frame its own policy in respect of time limit for the consideration of such requests. In fact, we find that the said period can be said to be long for release of a prisoner seeking parole on account of death and marriage in the family as such situation warrant more humane, considerate and

quick decision. Therefore, the State Governments of Punjab and Haryana should issue instructions for deciding such requests in more expeditious manner.

19. In view of the above, we deem it appropriate to issue the following instructions:

(i) The request for parole and furlough should be considered by the days and Director General of Prisons within 10 days except in case of parole sought under Clause (a) and (b) of Sub-section 1 of Section 3 of the Act.

(ii) In respect of release sought under Clause (a), (b) and for emergent sufficient cause within Clause (d) of Sub-section 1 of Section 3, the State Governments shall issue necessary instructions for considerations of the request of parole expeditiously and preferably by delegating such powers of the State Governments to District Magistrates or any other officer, it considers appropriate.

(iii) The authorities concerned shall consider the request for temporary release on parole or furlough and decline the same only on the grounds mentioned u/s 6 of the Act. Any mechanical rejection of request for release on parole or furlough such as for breach of apprehension of peace is not warranted by law. The competent authority shall pass reasoned and speaking order, whenever it is to decline request for temporary release specifying endanger to the security of the State or of public order.

20. With the said directions, the petitions stand disposed of.