
(2018) 08 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18283 of 2018

Vishal Sherawat @ Teddy

APPELLANT

Vs

State of Punjab & others

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302

Protection of Children from Sexual Offences Act, 2012 — Section 14

Citation : (2018) 08 P&H CK 0005

Hon'ble Judges : RAJIV NARAIN RAINA, J

Bench : Single Bench

Advocate : Bhupinder Banga, Jasleen Kaur Sidhu, Ravinder Chhillar

Final Decision : Disposed off

Judgement

The prayer in the present petition is for issuing directions to the respondents to grant parole to the petitioner for attending to his father, who is stated to be seriously ill.

The petitioner was convicted and sentenced to undergo life imprisonment in case FIR No.34 dated 27.02.2013. He was 19 years old when the alleged

crime was committed. He was one of 9 accused, who all stand convicted by the court of the learned Sessions Judge, SAS Nagar (Mohali). As per

custody certificate (Annex P-1), the petitioner has undergone 05 years 02 months & 27 days in Jail as on 09.07.2018, out of which period of 7 months

& 17 days is after conviction.

The petitioner has applied for parole on the ground that his father is seriously ill and he wants to be with him. His application for parole has not been

decided by the District Magistrate, Patiala, which exercises jurisdiction over Nabha Jail here he is lodged.

Verification report has been placed on record as Annex P-2, in which it is recorded that the petitioner did not reside in Bawana Village regularly and studied outside, which would mean in a school outside Delhi. Thus, possibility of his indulgence in crime in future cannot be ruled out. However, as far as the character of the petitioner is concerned, the verification report says that as per the statements of the local residents, he was not found involved in any other criminal case. The recommendation is that there is ambiguity in ensuring the timely return of the accused in jail because the accused did not reside in Bawana Village, Delhi and, thus, the petitioner may not be granted parole. On the basis of such report, the Deputy Commissioner of Police, Rohini District Delhi and the SDM, Narela, have opposed the parole of the petitioner since the crime was grave.

Be that as it may, the District Magistrate, Patiala being the competent authority has not expressed his independent opinion; whether the petitioner deserves to be released on the ground that his father is unwell. Therefore, the writ petition is premature as the competent authority is yet to take a final decision. Thus, at this stage without any final order having been passed by the competent authority either declining or recommending the parole of the petitioner, it would be inexpedient for this Court to issue any directions for the temporary release of the petitioner. The matter is liable to be considered by the competent authority in accordance with law.

In these circumstances, the instant petition is disposed of with a direction to the District Magistrate, Patiala -cum- Deputy Commissioner, Patiala to consider the request of the petitioner for parole and pass a speaking order thereon within a period of 10 days from the date of receiving of certified copy of this order. He may make such inquiries as are required regarding the state of health of the father etc. and also keep in mind the following observations made by Division Bench of this Court in CRWP No.554 of 2016 titled "Ram Chander Vs. State of Punjab & others" decided on

06.03.2017:

"The provisions of the Act provide for the temporary release of prisoners for good conduct on certain conditions as enacted by the legislature of the State of Punjab. Temporary release on parole is granted on certain conditions as envisaged by the provisions of Section 3 of the Act; besides, temporary release on furlough is granted in terms of Section 4 of the Act. In

terms of Section 5A of the Act, prisoners are not entitled to temporary release in certain cases, like cases where death sentence has been awarded or a prisoner is a 'hardcore prisoner'. 'Hardcore prisoner' has been

defined in Section 2 (aa) of the Act as follows:-

(aa) ""hardcore prisoner"" means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;

The petitioner does not fall under the said category and therefore, is not a hardcore prisoner. Besides, Section 6 (2) of the Act provides that

notwithstanding anything contained in Sections 3 and 4 of the Act, no person is entitled to be released under the Act, if on the report of the District

Magistrate, where consultation with him is necessary, 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.

Therefore, release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the

maintenance of public order. The recommendation made by the District Magistrate, Unnao (respondent No. 3) for not releasing the petitioner on

parole is merely that the petitioner is undergoing life imprisonment in a case like murder, so there is a probability that he may commit a crime on

release on parole. The likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as

mere likelihood of committing crime is not to be taken as apprehension of a threat to the security of the State or the maintenance of public order. As

already noticed, parole can be declined in case the competent authority is satisfied that his release is likely to endanger the security of the State and

maintenance of public order. No such eventuality has been mentioned in the present case.â??