

(2009) 03 P&H CK 0297

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. M-6148 of 2009

Mam Chand

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision: March 27, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2009) 5 RCR(Criminal) 450

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Surender Deswal, for the Appellant; Amit Kaushik, Assistant Advocate General, Punjab, for the Respondent

Judgement

Harbans Lal, J.

This petition has been moved by Mam Chand u/s of 482 of Cr.P.C. read with Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for brevity 'the Act') to quash the impugned rejection order dated 10.2.2009 (Annexure P-2) and to issue direction to the respondent to release him on six weeks agriculture parole.

2. The brief facts giving rise to this petition are that the petitioner was convicted for life imprisonment by the court of learned Additional Sessions Judge, Gurgaon vide order dated 7.12.2007 in case FIR No. 174 dated 18.6.2005 registered under Sections 148, 149, 302, 34 of IPC at PS Bilaspur, Gurgaon.

3. There is not even a single incident, wherein he has violated the rule of prison. His behaviour throughout in the prison is good. He has applied for six weeks agriculture parole through respondent No. 4, vide his application dated 20.12.2007, which has been rejected by respondent No. 3 mainly on the ground that as per Notification dated 18.12.2007 of Haryana Government, a convict cannot be released on parole till he completes one year after his conviction. On completion of his one year

sentence, again his application has been rejected. The complainants are head strong persons and every time they manipulated to get the parole refused. As per the provisions of the Act, the petitioner can avail six weeks agriculture parole u/s 3(1)(c) ibid as he himself is the owner of the self cultivated agricultural land as per Annexure P-3, copy of the Jamabandi for the year 1999-2000. In these premises, he may be released on parole.

4. In the joint written statement filed on behalf of the respondents, it has been averred that the agricultural parole case of the petitioner was initiated but it was rejected by the Commissioner, Gurgaon Division, Gurgaon on the ground that he has not completed one year of his sentence after conviction. That there is apprehension of breach of peace, if the petitioner is released on parole. The reasons given for parole have been found to be incorrect. He is in custody since 23.6.2005. As such, this petition may be dismissed.

I have heard the learned counsel for the parties.

5. Obviously, the parole has been declined on three grounds viz. (a) he has not completed one year of his sentence after conviction; (b) there is apprehension of breach of peace, if he is released on parole; and (c) the reasons given for parole have been found to be incorrect. It is own case of the respondents that the petitioner is in custody since 23.6.2005. Thus, palpably he has completed one year of his sentence after his conviction. The rejection of prayer for parole merely on the ground of apprehension of breach of peace in the village, in the event of the petitioner being released on parole has been held to be legally unsustainable in re: Mohinder Singh v. State of Haryana 2001 (1) RCR (Crl.) 239 as well as Harnek Singh v. State of Punjab 2000 (4) RCR Crl.) 215. As would be apparent from Annexure P-3, copy of the jamabandi for the year 1999-2000, the petitioner is the owner in cultivating possession of the agricultural land. Thus, all the three objections raised by the respondents pale into insignificance. In re: Harnek Singh (surpa), it has been observed that "it would be suffice to say that while making such reports, the District authorities should adopt a humanitarian approach and recommend the rejection of an application only in cases where there is some material available with them for suspecting that in the event of the petitioner being released there is a genuine likelihood of his posing a threat to the security of the State. A mere apprehension of breach of peace can be countered by reducing the period of parole and keeping the movement of the petitioner under surveillance." In re: Dalwinder Singh v. Inspector General of Prisons and another, 1993 (1) RCR (Crl.) 694, this Court has held that "the legislature has enacted Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 in order to encourage the prisoners to become good citizens by behaving properly in the Jail as well as on humanitarian grounds so that the dependents may not suffer unnecessarily." In re: Chand Singh v. State of Punjab 1996 (3) RCR (Crl.) 230, it has been observed as follows :

4. At the outset, as far as the terminology of Section 3 of the said Act is concerned, it is provided that the State Government in consultation with the District Magistrate or any other Officer appointed in this behalf, by notification and subject to such conditions and in such manner as may be prescribed, is empowered to release temporarily for a period of specified in sub-section (2) any prisoner from the prison with certain stipulation laid down in sub-clauses (a) to (d). Sub-clause (d) of the Section says that it is desirable to do so for any other sufficient cause. The case of the petitioner does not fall within the condition laid down under clause (a) to (c) but is covered by sub-clause (d) of Section 3 of the said Act and the Inspector General of Prisons has to determine the matter as a quasi judicial authority and he has to consider the case of every convict who seeks parole on merit of each case, having regard to the justice in mind, whether the convict required parole for the purpose as laid down in the Section. He cannot bypass the Section saying that there is likelihood of breach of peace in the area if the convict is released on bail. It is the duty of the District Magistrate and the Superintendent of Police to maintain law and order in the area. If there is any apprehension for breach of peace, it is the duty of the police and the District Magistrate to look into the matter and give protection to the people, who are expecting such danger from the release of the accused on parole. The law laid down is that nobody can be released if his release is detrimental to the security of the country or there is likelihood that his release in any way will endanger the security or integrity of the country. The mere allegation that there is apprehension of breach of peace is no criteria on the basis of which the Inspector General of Prisons can refuse the release of the petitioner on temporary parole for a specified period as laid down in the section. Hence, the order passed by the Inspector General of Prisons is set aside. He is directed to consider the case of the petitioner afresh and to pass the appropriate order within 10 days from the receipt of this order. A copy of this order be provided to the petitioner by tomorrow on payment of costs.

6. Reverting back to the instant case, it appears that the respondents have withheld the concession of parole arbitrarily and on vague grounds. His application could not have been rejected on the ground that there is an apprehension of breach of peace. Such ground is unknown under the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

In consequence of the preceding discussion, Annexure P-2 is hereby quashed. The respondents are directed to release the petitioner on parole for a period of six weeks, subject to the satisfaction of District Magistrate, Mewat, who shall take an adequate surety before releasing him under the Rules. After expiry of the abovesaid parole period, the petitioner shall surrender before the Superintendent, District Jail, Gurgaon i.e. respondent No. 4. The petitioner shall not commit any offence during the parole period. He shall avail the same only for the purpose, which was applied. In the event, he violates any terms or conditions of bail bonds, it will be open to the State to take the petitioner in custody.