N. K. S.

Before M. M. Punchhi, J.

AMAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Writ Petition No. 465 *of* 1983.

November 10, 1983.

Punjab Good Conduct Prisoners (Temporary Release) Act (XI of 1962)—Sections 3 and 4—Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963—Rule 3—Word 'parole'—Meaning of—Distinction between 'parole' and 'furlough'—Period of release on parole—Whether to count towards computation of the period of sentence.

Held, that the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 is a legislative measure to provide for the temporary release of the prisoners for good conduct in certain conditions. It conceives of two kinds of release. One kind is provided in section 3 thereof and the other in section 4. They can broadly be distinguished *inter se* as releases which are sought by the

prisoner on his own in one case and releases which the Government concessionally permits on its own in the other. The prisoner can apply to the State Government for his temporary release under section 3 if a member of his family has died, or is seriously ill, or the marriage of his son or daughter is to be celebrated, or his release is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of his or a member of his family is prepared to help him in this behalf in his absence, or if he has any other sufficient cause. For each reason, sub-section (2) of section 3 provides different periods of release. The Legislature in its wisdom thought that since these releases were being permitted at the askance of the prisoner to serve his causes, he should not be a beneficiary of the period towards reckoning it in computation of his sentence. So far as section 4 is concerned, the release thereunder is 'a release on furlough' and the prisoner becomes due for it on the expiry of the specified three years imprisonment and sub-section (3) thereof provides that the period of release referred to in sub-section (1) shall count towards the total period of sentence of a prisoner. Section 3 of the Act specifically says that the period of release thereunder shall not count towards the total period of the sentence of the convict. Parole or furlough is a concession, as is plain from the bare reading of the Act, and no prisoner is entitled to it as a matter of right. The distinction between the two, however, lies that in 'parole' under section 3, the sentence gets suspended or is held in abeyance whereas in the case of 'furlough' under section 4, the sentence keeps running subject to other conditions fulfilling. Thus, the period spent on parole cannot be counted towards computing the total period of sentence undergone by the prisoner.

(Paras 5 and 10).

Petition under Articles 226/227 of the Constitution of India praying that the entire record concerning the case of the detenue may please be summoned and after perusal of the same this Hon'ble Court may be pleased to issue :

(a) *a writ of Habeas Corpus holding that further detention of the detenus Jagir Singh son of Amar Singh and Baj Singh son of Amar Singh, residents of village Kakrali, P.O. Pandori—Kotwal, Tehsil and District Hoshiarpur, life convicts confined in Central Jail Patiala, is not in accordance with law and that the detenus are entitled to be released forthwith;*

(b) *a direction be issued to the respondents to release the detenus forthwith as their further detention is not based on sufficient reasons;*

(c) *any other order which in the circumstances of the present case, this Hon'ble Court may deems fit and proper be also passed;*

It is further prayed ;

(*i*) *proceedings Under Article* 215 *of the Constitution of India be initiated against the respondents as the undertaking given before this Hon'ble Court has not been complied with* ;

(*ii*) *cost of the petition be awarded to the petitioner.*

(*iii*) *during the pendency of the present writ petition the detenus be released on bail.*

V. K. Jindal, Advocate, *for the Petitioner.*

D. S. Keer, Advocate for Advocate General, Punjab, *for Respondent.*

JUDGMENT

M. M. Punchhi, J. (oral):—

(1) Admitted and heard simultaneously.

(2) This petition for *habeas* corpus raises rather a ticklish question as to what meaning is to be assigned to the word "parole" commonly in vogue in the context of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as "the Act").

(3) The petitioner claims the release of two detenus Jagir Singh and Baj Singh. These two persons were sentenced to imprisonment for life on 1st April, 1975 by a Court of Session under section 302, Indian Penal Code. The petitioner claiming that they had actually served sentence of more than 8½ years each, inclusive of the period they spent on parole, as also that they had spent 14 years imprisonment inclusive of the remissions earned, their cases for premature release had to be considered. The petitioner at an earlier occasion had approached this Court in Criminal Writ No. 301 of 1983 which was disposed of by K. P. S. Sandhu, J., on 17th August, 1983 on the understanding that the detenus had by then not completed the requisite period and the moment they did so, the State Government would be prepared to take up their cases for premature release. The State Government in that event was directed to supply a copy of the order to the detenus. By way of this petition, the petitioner

bemoaning that the requisite period had elapsed and a copy of the order had not been supplied, again invited the attention of this Court towards the claim. Reliance was placed by the petitioner on *Maru Ram* v. *Union of India, etc.*, (1) as was followed by me in *Rajinder Singh* v. *State of Punjab and another*, (2). Support was also sought from Criminal Writ Nos. 253, 272 and 273 of 1983 decided by B. S. Yadav, J., on 22nd July, 1983 and other decisions in which the view I had expressed in *Rajinder Singh's case* (supra) was either conceded to by the State or remained unquestioned.

(4) In the return filed by the State, the stance taken is that both the detenus have not actually undergone sentence of 8½ years imprisonment and thus they are not entitled to be considered for premature release at the present juncture. The State has also explained that the parole period which the detenus concessionally availed has not to be reckoned towards computing actual sentence in the light of the provisions of the Act. Seemingly, on first impression, the stance taken by the State runs counter to the view expressed by me in *Rajinder Singh's case* (supra), but whether it is so a matter which is presently being dealt with.

(5) It would be essential to have a broad view of the Act. It is a legislative measure to provide for the temporary release of the prisoners for good conduct on certain conditions. It conceives of two kinds of releases. One kind is provided in section 3 thereof and the other in section 4. They can broadly be distinguished *inter se* as releases which are sought by the prisoner on his own in one case and releases which the Government concessionally permits on its own in the other. The prisoner can apply to the State Government for his temporary release under section 3 if a member of his family has died, or is seriously ill, or the marriage of his son or daughter is to be celebrated, or his release is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of his or a member of his family is prepared to help him in this behalf in his absence, or if he has any other sufficient cause. For each reason, sub-section (2) of section 3 provides different periods of release. The Legislature in its wisdom thought that since those releases were being permitted at the askance of the prisoner to serve his causes, he should not be a

(1) A.I.R. 1980 S.C. 2147.

(2) Cr.W. No. 180 of 83 decided on 23rd May, 1983.

beneficiary of the period towards reckoning it in computation of his sentence. Thus, sub-section (3) of section 3 provided as under :—

> "The period of release under this section shall not count towards the total period of the sentence of a prisoner."

So far as section 4 is concerned, the release thereunder is "a release on furlough" and the prisoner becomes due for it on the expiry of the specified three years imprisonment. Here the measure of release on furlough has been provided to be three weeks during the first year of his release and two weeks during each successive year thereafter. In such case, sub-section (3), thereof, provides as follows :—

> "Subject to the provisions of clause (d) of sub-section (3) of section 8, the period of release referred to in sub-section (1) shall count towards the total period of sentence of a prisoner."

Clause (d) of sub-section (3) of section 8 yet permits the Superintendent of Jail not to count the period of temporary release on furlough of the prisoner under section 4 towards the sentence, in the event the prisoner is found guilty of having surrendered himself late after the expiry of the furlough period (details apart). It is pertinent to be noticed from the language of the Act that the word "parole" nowhere figures in it.

Yet in the rules known as the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963, the word "parole" has come to be employed while providing procedure for temporary release in rule 3. The relevant extract thereof is reproduced below :—

> "3. Sections 3, 4, 10(1), 10(2)(b), 10(2)(d) and 10(2)(e): Procedure for temporary release.—(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family. (2) The Superintendent of Jail shall forward the application along with 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. (Emphasis supplied).

* * * * * ".

(6) It is the conceded position of the State that the word "parole" has been employed for the purposes of release envisaged under section 3 of the Act and the word "furlough" necessarily is that of section 4. Now on this distinction and in the context of the provisions of the Act, it was sought to be urged that it had no parity with the Uttar Pradesh Prisoners Release on Probation Act; a statute in the context of which the Supreme Court decided *Maru Ram's case* (supra), and made observations relating to the word "parole".

(7) In the afore-referred to statute of Uttar Pradesh, a prisoner can be released by licence on conditions imposed thereunder. Section 2 permits such a course on the conditions that the prisoner shall be placed under the supervision or authority of a Government Officer or a person professing the same religion as the prisoner, or such secular institution or such society belonging to the same religion as the prisoner as may be recognised by the State Government for the purpose; provided such other person, institution or society is willing to take charge of him. And in that context the section permits that the period during which a prisoner is absent from prison under the provisions of the Act, on a licence which is in force, shall be reckoned as part of the period of imprisonment to which he was sentenced, for the purpose of computing the period of his sentence and for the purpose of computing the amount of remission of sentence which might be awarded to him under any rules in force relating to such remissions. Significantly, the said Act patently revolves around the good conduct of the prisoner as taken note of in section 2 which provides that it must appear to the State Government from the antecedents and the conduct of the prisoner in prison that he was likely to abstain from crime and lead a peaceable life, if he is released from prison. Nowhere

in the said statute has any provision been made enabling the prisoner to seek his release to serve his own purposes like attending to his agricultural pursuits, performing marriages of children and the like as provided in Punjab Statute. It is in that context that a question arose before the Supreme Court in *Maru Ram's case* (supra) whether the provision of licensed release, when it had specifically been provided to be as if it was a part of the period of imprisonment for the purpose of computing his sentence and the amount of remission earned, was in conflict with the provisions of section 433-A of the Code of Criminal Procedure which provided that a life-sentencer had to serve at least 14 years imprisonment before he could be released from prison. The Supreme Court then answered in conclusion (11) in paragraph 72 of the Report as under :—

> "The U.P. Prisoners' Release on Probation Act, 1938, enabling limited enlargement under licence will be effective as legislatively sanctioned imprisonment of a loose and liberal type and such licensed enlargement will be reckoned for the purpose of the 14-year duration. *Similar other statutes and rules will enjoy similar efficacy.* (Emphasis supplied)."

(8) Now if the Punjab Statute had similar kind of provision as the one which is existing in the U.P. Statute, obviously it had to enjoy the requisite efficacy. As has been pointed out earlier, efficacy is available only for that period for which the State Government releases the prisoner under section 4 and that period has to count towards the total period of the sentence of a prisoner. *Maru Ram's case* (supra), would in such a situation come to apply to induct ease to the rigour of section 433-A of the Code of Crimnial Procedure for such was as the Supreme Court put it, "a legislatively sanctioned imprisonment", but the same measure of efficacy can by no means be said to be employed to a release under section 3 of the Punjab Act,despite the observations of the Supreme Court (which I quoted in *Rajinder Singh's case*) which are general in nature for the purpose. To quote them again herein:—

> ".....Restraint on freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law, and, likewise, parole, where the parole is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded

as imprisonment. This point is necessary to be cleared even for computation of 14 years under section 433-A..... There was some argument that section 433-A is understood to be a ban on paorle. Very wrong. The section does not obligate continuous fourteen years in jail and so parole is permissible....."

(9) For the view thus expressed by the Supreme Court, I had in *Rajinder Singh's case* (supra) extended it conceptually to paragraph 516-B of the Punjab Jail Manual by observing as follows:—

"It is clear from the afore-extracted passages from *Maru Ram's case* (supra), that release on parole is conceptually a loose imprisonment. It partakes the character of imprisonment and thus necessarily has to be taken into account while computing 14 years' actual sentence under section 433-A. I fail to see why conceptual imprisonment (being on parole) is not to be reckoned while computing 8½ years' actual sentence under 516-B of the Punjab Jail Manual (as amended by further instructions issued from time to time). Thus, it was incumbent on the State Government to treat the detenu as undergoing actual sentence while he remained on parole and reckon its credit."

(10) The view taken by me, as said before, was adhered to in subsequent decisions of this Court. And such a view was necessarily in consequence of the conceptual character of parole as spelled out by the Supreme Court in *Maru Ram's case* (supra). The view even then taken cannot be found fault with on general principles, in the absence of any statute governing the subject. At that time, I must painfully recall that the provisions of the Punjab Act were not brought to my notice and thus they could not be focussed upon. But, in the instance case, they have been projected and very rightly. The afore-observations of the Supreme Court undoubtedly are law but are Judge-made law. In the presence of a specific provision which the Legislature in its wisdom have thought to operate, the conflict between the same and the Judge made law has necessarily to be resolved in favour of the specific provision. There is no quarrel to this proposition raised by either side. In these circumstances, I have no hesitation to explain thus my view in *Rajinder Singh's case* (supra) that in the context of and in conjunction with Punjab Act, it extends to those cases

which are releases as envisaged under section 4 of the Act so that the prisoner is not a loser thereof in the matter of computation towards serving of 14 years' sentence under section 433-A and 8½ years' actual sentence under paragraph 516-B of the Punjab Jail Manual. But *Rajinder Singh's case* (supra) can by no means have applicability to the releases under section 3 of the said Act, for the statute specifically says that the period of release under that section shall not count towards the total period of the sentence of the petitioner. Parole or furlough is a concession, as is plain from the bare reading of the Act, and no prisoner is entitled to it as a matter of right. The distinction between the two, however, lies that in "parole" under section 3, the sentence gets suspended or is held in abeyance whereas in the case of "furlough" under section 4, the sentence keeps running subject to other conditions fulfilling. In any case, general concepts of law cannot violate the specific language of a statute. Thus, I am of the considered view that when the Punjab Government has adopted the word "parole" to signify release of a prisoner under section 3 of the Act, the said word has its own import in the light of that section, and to that word, the general principles invoked by the Supreme Court in *Maru Ram's case* which is specifically in the context of the U.P. Act, can have no applicability. These are my considered reasons for explaining thus my decision in *Rajinder Singh's case* (supra).

(11) On the admitted facts of this case, the detenus have not actually served 8½ years actual sentence. Thus, their case is not yet ripe for premature release. No relief can flow to them in this petition. Accordingly, the same is dismissed without any order as to costs.

N. K. S.