

Before Vikas Bahl, J.

SANJAY—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CRWP No.4859 of 2022

May 20, 2022

Code of Criminal Procedure 1973— S.482— Haryana Good Conduct Prisoners (Temporary Release) Act, 1988—S.3(1)(a)— Parole— Petitioner seeking parole for 3 months to serve mother admitted in Hospital— Admitted that petitioner's mother seriously ill— Petitioner sole bread winner of his family stands established— Petitioner earlier released on emergency parole — No misuse of parole—Sole reason given for rejecting parole that if released on parole, petitioner would abscond and commit other crimes— No material referred to on basis of which conclusion has been arrived at— Parole cannot be rejected mainly on apprehension that petitioner will again commit same offence— Hence, grant of parole.

Held, that a perusal of the said reply would show that the fact that the petitioner's mother is seriously ill, stands confirmed. Even the fact that the petitioner is the sole bread winner of his family also stands established. In paragraph 5 of the said affidavit, it has been stated that earlier also, the petitioner was released on emergency parole and nothing has been indicated to show that he had misused the parole. A perusal of the impugned order would show that the sole reason given for rejecting the parole is that in case the petitioner is released on parole, then he would abscond and commit other crimes. No material has been referred to on the basis of which the said conclusion has been arrived at.

(Para 5)

Further held, that a perusal of the above judgment would show that the parole cannot be rejected mainly on the apprehension that the petitioner will again commit the same offence.

(Para 6)

Subhash Kumar, Advocate, *for the petitioner.*

Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (Oral)

(1) This is a Criminal Writ Petition filed under article 226 of the Constitution of India read with Section 482 Cr.P.C. for grant of concession of parole to the petitioner for 3 months under Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 to enable him to serve his mother who was admitted in emergency on 17.05.2022 in Kaushalya Spine and Pain Hospital, Rohtak.

(2) Learned counsel for the petitioner has submitted that the petitioner was convicted in FIR No. 68 dated 27.07.2004 under Section 25 of the Arms Act and Sections 148, 149, 186, 224, 225, 302, 307, 332, 353, 392 and 427 of IPC, registered at Police Station Kalanaur, District Rohtak vide judgment and order of quantum of sentence dated 21.10.2005 and is confined in jail for the last 15 years approximately. It is further submitted that the mother of the petitioner is suffering from CVA with vertigo and cervical and is admitted in the hospital and requires urgent care and the petitioner is the only bread winner of his family and there is nobody to look after his old mother. Earlier also the petitioner was released on emergency parole which was further extended vide order dated 23.03.2022 and had complied with all the terms and conditions of the said emergency parole. It is contended that vide order dated 06.05.2022, the parole of the petitioner has been rejected on the ground that he may abscond from the parole and that he could commit other crimes and it is submitted that the same is based on surmises and conjectures, without there being any material before the authorities to come to the said conclusion. Reliance has been placed upon a judgment of a coordinate Bench of this Court in *Amritpal Singh @ Amba versus State of Punjab*¹ to contend that mainly on the ground of apprehension, the parole cannot be rejected. In the present case, on 19.05.2022, learned State counsel was directed to verify the averments made in the petition and also to check the medical health status of the mother of the petitioner. In pursuance of the same, learned State counsel has submitted the reply by way of affidavit of Deputy Superintendent, Central Jail, Ambala and has referred to the averments made in the same.

(3) This Court has heard learned counsel for the parties and has perused the paperbook.

(4) Paragraphs 3 to 5 of the said affidavit submitted by Deputy Superintendent, Central Jail, Ambala is reproduced herein below:-

¹ 2021(3) RCR (CrL) 144

“3. That the mother of petitioner is suffering from PLVD Cervical and because of symptomatic Cardiology, and admitted in Kaushalya Spine & pain Hospital Rohtak for further management on 17.05.2022 as per report of Dr. Sandeep Duhan MBBS, DA, FIPM, CIPM. Consultant Pain Physician is enclosed herewith as Annexure R-1.

4. That the petitioner is only sole bread earner of his family in which consists of old age parents, but unfortunately he is languishing in Central Jail Ambala for more than 15 years (Annexure R-1).

5. That the petitioner was released on emergency parole on dated 09.03.2022 in connection to caretaking of his mother and he had to reported back on dated 24.03.2022 but he emergency parole was extended by Hon'ble Punjab & Haryana High Court, Chandigarh upto 19.04.2022.”

(5) A perusal of the said reply would show that the fact that the petitioner's mother is seriously ill, stands confirmed. Even the fact that the petitioner is the sole bread winner of the his family also stands established. In paragraph 5 of the said affidavit, it has been stated that earlier also, the petitioner was released on emergency parole and nothing has been indicated to show that he had misused the parole. A perusal of the impugned order would show that the sole reason given for rejecting the parole is that in case the petitioner is released on parole, then he would abscond and commit other crimes. No material has been referred to on the basis of which the said conclusion has been arrived at. The coordinate Bench in the judgment of *Amritpal Singh @ Amba* (*supra*) has held as under:-

“By this petition, the petitioner is seeking quashing of order dated 29.11.2019 (Annexure P-1) whereby application made by the petitioner for grant of parole has been rejected by the Deputy Commissioner, Tarn Taran. As per the order dated 29.11.2019 (Annexure P-1), the case of the petitioner was sent to the Senior Superintendent of Police and as per the report of Senior Superintendent of Police received vide letter dated 20.11.2019, the petitioner could sell heroin again after coming out on parole and may abscond keeping in view that recovery from the petitioner was commercial quantity. Keeping in view this report, application of the petitioner for parole has been declined.

After notice of motion, short reply of Deputy Superintendent, Central Jail, Ferozepur on behalf of respondents No. 1 to 3 has been filed. Learned counsel for the State while referring to short reply has argued that petitioner after coming out on parole can indulge in selling heroin again and may abscond. He has referred to para 4 in which details of 5 FIRs registered against the petitioner have been mentioned.

Learned counsel for the State further submits that keeping in view background of the petitioner, his case for grant of parole has been rightly rejected by the Deputy Commissioner vide order dated 29.11.2019 (Annexure P-1).

Learned counsel for the petitioner has referred to an order passed by this Court in CRWP-2156-2019 titled as Jeet Singh V/s. State of Punjab and others, decided on 07.01.2020, whereby petition has been allowed by the Coordinate Bench of this Court observing that pendency of FIRs cannot be made a ground to decline release of the petitioner on parole.

In the present case, as per the custody certificate dated 08.08.2020 the petitioner has undergone 3 years and 22 days out of 10 years in custody and he has not availed parole even once during these past 3 years. Merely on apprehension that the petitioner will again indulge in selling heroin and even registration of FIRs, cannot be made a ground to deny him right to meet his family after 3 years.

Hence, petition is allowed and direction is given to the respondents to release the petitioner on six weeks' parole to meet his family.”

(6) A perusal of the above judgment would show that the parole cannot be rejected mainly on the apprehension that the petitioner will again commit the same offence.

(7) Keeping in view the abovesaid facts and circumstances, moreso, the law laid down in the abovesaid judgment, the impugned order dated 06.05.2022 is set aside and the petitioner is released on parole for a period of 3 weeks subject to heavy surety to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

(8) The petitioner is directed to surrender on 14.06.2022 at 04:00PM before the Central Jail, Ambala.

Ritambhra Rishi