

Before Rakesh Kumar Jain, J.

SANJAY—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.1980 of 2018

August 08, 2018

Constitution of India, 1950—Arts. 226 and 227—Haryana Good Conduct Prisoners (Temporary Release) Act, 1988—Ss. 3, 4, 5-A, 8 and 9—Indian Penal Code, 1860—Ss.186, 153, 307, 34, 302 and 120-B—Arms Act, 1959—S.25—Jail Superintendents directed to register applications for parole, furlough—If not register—Member Secretary, Legal Service Authority to ensure registration—District Judge to supervise on monthly visit, when application register—Jail Superintendent to make report to District Magistrate in 5 days—District Magistrate to complete process in 21 days—Forward to Divisional Commissioner to complete process in 10 days.

Held, that direction is issued that whenever an application is filed by a prisoner for seeking parole or furlough under Section 3, 4 or if he is a hardcore prisoner, under Section 5-A of the Act, Supdt. Jail would immediately register his application and in case the application is not taken by the Supdt. Jail for any reason, then the matter may be brought to the notice of the Member Secretary Legal Services Authority would ensure the registration of the application and the District and Sessions Judge, on his monthly visit to the jail would supervise it. As soon as the application is filed, Supdt. Jail is directed to complete the process within 5 days by making his report to the District Magistrate. The District magistrate is further directed that when he receive the report of the Supdt. Jail for the parole or furlough, as the case may be, he would complete his process within 21 days and forward the case with his recommendations to Divisional Commissioner, who is further directed to complete his process within 10 days.

(Para 19)

Vishal Nehra, Advocate, *for the petitioner.*

Baldev Raj Mahajan, A.G., Haryana with Saurabh Mohunta, D.A.G, Haryana.

RAKESH KUMAR JAIN, J.

(1) The petitioner is a life convict and presently lodged in District Jail, Sonapat. He was convicted in a case registered vide FIR No. 428 dated 26.11.2011 under Section 302/120-B/34 Indian Penal Code, 1860 [for short ‘the IPC’] and Section 25 of the Arms Act, 1959 [for short ‘the Arms Act’] at Police Station Civil Lines, Sonapat, for life imprisonment by the Additional Sessions Judge, Sonapat vide his order dated 31.03.2015 but his Criminal Appeal bearing No. CRA-D-210-DB-2017 has been admitted and the recovery of fine has been stayed. It is averred that the petitioner has maintained good conduct in the Jail while undergoing sentence and has given no chance of any complaint, there is no other case pending against him and is a first offender. It is also averred that he has applied for parole for six weeks on account of construction of his residential house after four years of sentence. He is not a danger to the peace and security of anyone in the village or to the Society and the village panchayat has supported his case for releasing him on parole. In this regard, he has filed a certificate of the Gram Panchayat. It is further averred that he had moved an application dated 10.07.2017 to respondent No.3-Superintendent Jail, Sonapat but he did not take any action. It is also averred that father of the petitioner had already expired and now 8-9 months back his elder brother has expired leaving behind his two minor children. It is also submitted that his residential house needs repair and agriculture needs attention, which cannot be carried out by his old aged mother. With these averments, prayer has been made for releasing him on parole for six weeks in terms of the provisions of Section 3 (1) (b) of the Haryana Good Conduct Prisoners (Temporary Release), 1988 (hereinafter referred to as ‘the Act’).

(2) The respondents have filed their reply by way of an affidavit of Superintendent District Jail, Sonapat in which it is averred that the petitioner has been convicted and sentenced for life imprisonment with fine of Rs.5,000/- in another case registered vide FIR No. 159 dated 24.08.2001 under Section 302/449/216/120-B/34 IPC and 25 of the Arms Act at Police Station Tosham, District Bhiwani by the Additional Sessions Judge, Bhiwani vide order dated 17.01.2006. Besides having been convicted and sentenced for life in the case registered vide FIR No. 428 dated 26.11.2011. It is also averred that the petitioner was released on three weeks furlough w.e.f. 29.05.2007 from the District Jail, Bhiwani and was directed to surrender on 20.06.2007 but he did not surrender on the specified date

and was further arrested and lodged in District Jail Rohtak on 14.11.2007 by the local Police and a case was registered against him vide FIR No. 179/2007 under Section 8/9 of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the HGCP Act'] Act at Police Station Sadar Bahadurgarh and a case vide FIR No. 320/2007 was also registered under Section 25/54/59 of the Arms Act. He remained an absconder from parole w.e.f. 20.06.2007 to 13.11.2007 for 4 months and 25 days. It is also submitted that the petitioner was further released on parole for 4 weeks on account of house repair on 12.05.2010 from the District Jail Bhiwani and was directed to surrender on 10.06.2010 but this time also he did not surrender on the date prescribed rather he was again arrested and lodged in the District Jail Sonapat on 30.11.2011 by the local Police with registration of a case vide FIR No. 306 dated 29.11.2011 under Sections 186/353/307/34 of the IPC and Section 25 of the Arms Act and another case is registered against him vide FIR No. 291/10 under Section 8/9 of the HGCP Act at Police Station Sadar Bahadurgarh. The petitioner remained absconder from parole w.e.f. 10.06.2010 to 29.11.2011 i.e. 1 year 5 months and 20 days. It is also averred that the petitioner was convicted for absconding the parole in a case FIR No. 291/2010 by the Court of the learned Judicial Magistrate Ist Class, Bahadurgarh and vide order dated 27.01.2016, sentenced to the period already undergone. Thereafter, the petitioner was categorized as a 'Hardcore' prisoner on 08.04.2015 being convicted for life imprisonment in two different FIRs i.e. FIR No. 159 dated 24.08.2001 registered at Police Station Tosham, District Bhiwani and FIR No. 428 dated 26.11.2011 registered at Police Station Civil Lines, Sonapat. Reference has been made with regard to Clause 2 (aa)(viii) of the Act, as amended in 2013.

(3) Learned counsel for the respondents have further submitted that the petitioner has not come to the Court with the clean hands, inasmuch as, the application is purported to have been filed to the Superintendent District Jail, Sonapat is allegedly by one Balwinder Singh Son of Sanjay whereas it has been signed by one Sanjay Son of Raghbir Singh.

(4) Learned Advocate General, Haryana has submitted that since the petitioner has made false averments in para 4 of the writ petition that he is the first offender though he has been sentenced in another murder case, therefore, this petition deserves to be dismissed on this ground alone.

(5) I have heard learned counsel for the parties and perused the record with their able assistance.

(6) The petitioner being a convict has prayed for his release for a period of six weeks on parole by invoking the provisions of Section 3 (1) (b) of the Act. Section 3 (1) (b) provides that a convict can ask for his temporary release for his own marriage or of the persons mentioned in the said provision but in this case, the petitioner is seeking parole for house repair and agriculture purpose.

(7) The Act was enacted for temporary release of the prisoners on account of their good conduct but on certain conditions. The name of the Act itself suggests that in order to earn temporary release, the prisoner has to maintain good conduct during his stay in the prison. The Act provide two type of relief to the prisoners. Firstly, for parole in terms of Section 3 and secondly, for furlough, in terms of Section 4. The Legislature added the definition of “hardcore prisoners” also in Section 2 to deal with the cases of hardcore prisoners and inserted Section 5-A. Thus, there are two type of prisoners who can avail the benefit of parole or furlough. Firstly, the prisoners and secondly, the hardcore prisoners. In case an application is filed for parole by a prisoner, it would lie under Section 3 of the Act but in case any “hardcore prisoner” would file the application then it would lie under Section 5-A of the Act. In both the situation, the application has to be filed to the Superintendent Jail in which the prisoner is lodged. The Haryana Good Conduct (Temporary Release) Rules, 2007 (hereinafter referred to as ‘the Rules’) were provided in terms of Section 10 (1) (2) of the Act in which procedure for temporary release is provided both for the purpose of parole and furlough.

(8) In this regard, reference could be had to Rule 3 of the Rules which is reproduced as under :-

“3. (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. An adult member of the prisoner’s family may also make such an application.

(2) The Superintendent of Jail shall forward the application alongwith 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 places or places which the prisoner is allowed to visit and
- iii) the amount of surety bond.”

(9) A number of cases are being filed everyday by the prisoners, making complaint against the functionaries of the State for not considering their application for their release on parole or furlough. Rule 3 of the Rules provides that if a prisoner desires temporary release on parole or furlough i.e. under Section 3 or 4 of the Act, he would make an application in form A- 1 or Form A-2, as the case may be.

(10) Form A-1 is prescribed to file an application for seeking parole under Section 3 of the Act and Form A-2 is prescribed for seeking furlough in terms of Section 4 of the Act. If the application is so filed to the Superintendent Jail, either by the convict himself or by an adult member of his family, then the Supdt. Jail has to forward the said application along with its report to the District Magistrate who would further forward the case with his recommendations to the Director General for grant of parole or furlough or otherwise. The Director General is defined under Rule 2 (b) of the Rules to mean the Director General of Prisons. The releasing authority thereafter would issue to the Supdt. Jail a duly signed and sealed warrant in Form B for release of the prisoner specifying therein the period of release, place or places where the prisoner is allowed to visit and amount of surety.

(11) The general complaint of the prisoners is against the Supdt. Jail that either he would not receive their applications, filed under Section 3 or Section 4 or if the application is filed then he would take a long time to make his report.

(12) In order to resolve this issue, the learned State counsel has placed on record the instructions dated 15.12.2016 issued by the Director General of Prisons in regard to the disposal of the pending parole and furlough applications.

(13) It is provided that the applications, seeking release on parole/furlough shall be disposed of within the following time frame: -

- | | |
|---------------------|-----------|
| Superintendent Jail | - 5 days. |
| District magistrate | - 21 days |

Divisional Commissioner -10 days.

(14) It would be relevant to mention herein that the powers of the Director General Prisons, Haryana, mentioned under Section 3 (2) of the Act, to grant or refuse parole or furlough, has now been conferred upon the Divisional Commissioner.

(15) Insofar as the State of Haryana is concerned, it appears that they were alive to the situation that the prisoners who are languishing in jail have also got rights to be released temporarily during the period of their sentence either on parole or furlough and thus they have prescribed the number of days for the officer concerned to decide the fate of such prisoners. The Superintendent Jail is not a recommending authority but only a reporting authority, therefore, he is given 5 days. The District Magistrate has to decide *prima facie* as to whether on the basis of the report submitted by the Supdt. Jail, the benefit of parole/furlough is to be granted or not but he would only make his recommendations. The DGP/Divisional Commissioner thereafter is given a period of 10 days for the purpose of taking a final decision on the basis of the report much less recommendation for the purpose of grant or refusal of the parole.

(16) The question arises is as to whether the period prescribed by the State of Haryana is followed by the aforesaid authorities?

(17) As a matter of fact, as it has generally been seen by this Court that the said time period is not being followed and it is admitted by the Learned State counsel that the applications received through post are registered in the register maintained but the applications delivered by hand are not so registered.

(18) It is suggested that a direction may be issued to the Supdt. Jail to register all the applications in the register which may be received by hand or post but still the question would be as to what should be done if the Supdt. Jail do not accept the application at all? In this regard, it is suggested that to avoid this type of allegations to be made in the Court, the prisoner who has a complaint against the Supdt. Jail of not receiving his application may approach the legal services authority in the Jail who would ensure that the said application of the prisoner is duly received and processed by the Supdt. Jail

(19) I agree with this suggestion given by the learned AG Haryana and thus, at this stage, direction is issued that whenever an application is filed by a prisoner for seeking parole or furlough under Section 3, 4 or if he is a hardcore prisoner, under Section 5-A of the

Act, Supdt. Jail would immediately register his application and in case the application is not taken by the Supdt. Jail for any reason, then the matter may be brought to the notice of the Member Secretary, Legal Services Authority who would ensure the registration of the application and the District and Sessions Judge, on his monthly visit to the jail would supervise it. As soon as the application is filed, Supdt. Jail is directed to complete the process within 5 days by making his report to the District Magistrate. The District magistrate is further directed that when he receive the report of the Supdt Jail for the parole or furlough, as the case may be, he would complete his process within 21 days and forward the case with his recommendations to Divisional Commissioner, who is further directed to complete his process within 10 days. These directions are given in order to avoid unnecessary litigation coming to this Court only at the stage of issuing direction to the Supdt. Jail to consider the application whereas he is nobody to grant or refuse the parole except in a case of an emergency parole.

(20) In this regard, learned counsel for the State has produced a notification dated 30.7.2017, which read as under: -

“Haryana Government Jails Department Notification

The 30th July, 2007

No.S.O. 63/H.A. 28/1988/Ss.3 and 4/2007 – In exercise of powers conferred by sub-section (4) of Section 3 and sub-section (1) of Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (Act No.28 of 1988), and in supersession of Haryana Government, Jails Department, notification No.S.O.111/P.A. 11/62/S. 3/77, dated the 14th August, 1977 and No.S.O. 127/P.A./11/62/S. 4/77, dated the 20th September, 1977, the Governor of Haryana hereby authorized the Divisional Commissioner of the concerned division to exercise the powers of the State Government under the said section on the grounds specified thereunder for the offences of murder, dacoity, rape, rape with murder, dowry death cases and NDPS Act.

The Governor of Haryana hereby further authorizes the Superintendent of Jail of the concerned district wherein the prisoner is detained to exercise the power of the State Government only in respect of the grounds specified in clause (a) of sub Section 1 of the said Act.

The Governor of Haryana hereby further authorizes the District Magistrate of the concerned district to exercise all the powers under the above Section except those where the Divisional Commissioner and Superintendent of Jail has been authorized as above.

K.S. Bhoria
Financial Commissioner
and

Principal Secretary to
Government, Haryana,
Jails Department”

(21) Now reverting back to the merits of the case, it is apparent that the petitioner has not approached this Court with clean hands as he has falsely averred in para No.4 of his petition that he was not ever convicted in other cases whereas he has been convicted and sentenced for life imprisonment in FIR No.159 dated 24.08.2001 registered under Sections 302/449/216/120-B/34 of the IPC and Section 25 of the Arms Act at Police Station Tosham, District Bhiwani besides FIR No.428 dated 26.11.2011 registered under Sections 302/120-B/34 of the IPC and Section 25 of the Arms Act at Police Station Civil Lines, Sonipat in which he is already suffering sentence in District Jail, Sonipat. Moreover, the petitioner is not trustworthy because in the past he has absconded from the parole and furlough for a long period. He remained absconder from parole from 20.6.2007 to 13.11.2007 for a period of 4 months and 25 days then he was released on parole for four weeks for house repair on 12.5.2010 and was supposed to surrender on 10.6.2010 but was arrested on 30.11.2011 by the Police and then he remained absconder from parole from 10.6.2010 to 29.11.2011 for a period of 1 year, 05 months and 20 days. Every time FIR was registered against him. Moreover, the petitioner has already been termed as a ‘hardcore prisoner’. Therefore, the application filed by him under Section 3(1)(b) of the Act is not maintainable because there is a separate procedure prescribed for the hardcore prisoner to apply for parole.

(22) Thus in view of the aforesaid facts and circumstances, I do not find it to be a fit case for releasing the petitioner on parole much less on an application filed under Section 3(1)(b) of the Act.

(23) Dismissed.