



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 468 of 2023
Decided on: 10th March, 2023

Kapil Dev @ Kaplu

.....Petitioner

Versus

State of H.P and others

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ No.

For the petitioner:

Ms. Tim Saran, Advocate.

For the respondents:

**Mr. Anup Rattan, A.G with, Mr.
Y.W. Chauhan, Sr. Addl. A.Gs.
and Mr. J.S. Guleria, Dy. A.G.**

Tarlok Singh Chauhan, Judge. (Oral)

The instant petition has been filed for the grant of following substantive relief:-

- i) That the impugned rejection letter dated 30.08.2022 (Annexure P-1) issued by the respondent whereby the claim of the petitioner for grant of parole has been rejected may very kindly be quashed and set aside.
- ii) That the respondents may very kindly be directed to grant parole to the petitioner, in a time bound manner, as per law laid down therefor;"

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

2. The undisputed facts are that the petitioner had been convicted for an offence punishable under Sections 302, 342, 147, 148 and 149 of the Indian Penal Code by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- and in default of payment of fine to further undergo simple imprisonment for a period of five years, vide judgment dated 10.11.2004.

3. The judgment has attained finality and presently, petitioner is serving out sentence in Lala Lajpat Rai, District Open Air Correctional Home, Dharamshala. The petitioner has moved an application for grant of parole and the same was forwarded to the concerned District authorities i.e. District Magistrate/Superintendent of Police, District Kangra at Dharamshala, as required under the provisions of Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968, (for short 'the Act').

4. The matter was inquired into by both the authorities and thereafter petitioner was not recommended for parole by the District Magistrate vide letter dated 02.08.2022, reason

being that the petitioner on an earlier occasion had been released for 14 days on parole w.e.f. 07.07.2010 to 21.07.2010 with a direction to surrender before the Jail authorities on 21.07.2010, but the petitioner failed to surrender and remained absconded for a period of 10 years, 7 months and 24 days and eventually surrendered on 15.03.2021. A complaint under Section 8/9 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 was also filed before the learned Chief Judicial Magistrate, Kangra by the concerned Superintendent Jail and the learned Court sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-. In default of payment of fine, to further undergo imprisonment for three months, vide judgment dated 27.04.2022.

5. Now the moot question is whether the rejection of the application by the District Magistrate can be held to be contrary to law. The answer to the same is always in negative, for the simple reason that the convicts in the State are released on parole under the provisions of Section 3 & 4 of the Act, where detailed procedure for such release has been provided. As per the Rules, applications of prisoners desirous

of seeking temporary release are forwarded to the District Magistrate of the concerned District for his recommendations. The District Magistrate after consulting the Superintendent of Police and making such inquiries as deemed fit makes his recommendations. In case the District Magistrate, on his inquiry, is satisfied that the release of convict is likely to endanger the security of the State or the maintenance of public order, he may hold that the convict is not entitled to be released on parole.

6. Obviously, when such order is assailed, the Court would definitely look into the reasons accorded by the Magistrate, rejecting the application. In the instant case, the District Magistrate based upon the inquiry held and report submitted by the Superintendent of Police, has rejected the claim of the petitioner. Firstly, on account of his conduct as on an earlier occasion, the petitioner while on parole did not surrender to the Jail authorities and remained absconded for more than 10 years. Secondly, the Magistrate has also taken into consideration the reports and the statement of the complainant party, wherein they have objected to the release of the petitioner on the ground of threat perception,

because the petitioner along-with his six brothers was sentenced in a murder case. That apart, even the police authorities have expressed their apprehension in case the petitioner is released on parole, he would again jump the same as is evident from the report of SDPO, Jawali, District Kangra, H.P.

7. It is more than settled that the grant of parole is not a matter of right and is dependent on good conduct and also satisfying the other provisions of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 and the Rules framed thereunder.

8. In the peculiar facts and circumstances, we see no reason to interfere with the recommendations made by the District Magistrate and the Superintendent of Police. Consequently, we find no merit in the instant petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

March 10, 2023
(naveen)

(Virender Singh)
Judge