 2025:HHC:31339

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. :10750 of 2025
Reserved on : 08.09.2025
Decided on : 12.09.2025

Sachin Kumar ...Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram

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

Whether approved for reporting?[1] *Yes.*

For the petitioner : Mr. Lalit K. Sehgal, Legal Aid Counsel.

For the respondents : Mr. Varun Chandel, Additional Advocate General, with Mr. Rohit Sharma and Ms. Ranjna Patial, Deputy Advocates General.

Virender Singh, Judge.

By way of the present writ petition, petitioner-Sachin Kumar has invoked the extra ordinary writ jurisdiction of this Court, under Article 226 of the Constitution of India, seeking the following substantive reliefs, amongst others:

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[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

"(i) The act, conduct and orders of the respondents, whereby the case of the petitioner for grant of parole was rejected may kindly be declared illegal, arbitrary and unconstitutional and against the mandate of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act & Rules and may kindly be quashed and set aside, in the interest of law, justice and fairplay.

(ii) In the peculiar facts and circumstances of the case, the respondents may kindly be directed to release the petitioner on parole for a period of reasonable period, in the interest of law, justice and fairplay."

2. It has been contended on behalf of the petitioner that the petitioner has been convicted by the Court of learned Special Judge, Kangra at Dharamshala, District Kangra, H.P., vide judgment, dated 7th March, 2020, for the offences, punishable under Section 354-B of the Indian Penal Code (hereinafter referred to as 'IPC'), Sections 6 & 14 (3) of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act') and Sections 66-E and 67-B of the Information Technology Act (hereinafter referred to as 'IT Act'), and has been sentenced, as under:

Section	***Sentence imposed***
354-B IPC	*rigorous imprisonment for three years and to pay a fine of ₹ 5,000/-, with default sentence*
6 of POCSO Act	*rigorous imprisonment for twenty years and to pay a fine of ₹ 50,000/-, with default*

	sentence
14 (3) of POCSO Act	*Life imprisonment and to pay a fine of ₹ 1,00,000/- , with default sentence*
66-E of IT Act	*rigorous imprisonment for three years and to pay a fine of ₹ 50,000/-, with default sentence*
67-B of IT Act	*rigorous imprisonment for three years and to pay a fine of ₹ 1,00,000/-, with default sentence*

3. It has also been contended on behalf of the petitioner that while on parole, a scuffle took place and though, the petitioner, was innocent, but he came to know that on the basis of twisted fact, an FIR has been got registered against him, on 14th January, 2024, under Sections 341, 323, 504 and 506 IPC. The petitioner is stated to be on bail, in the said FIR.

4. The petitioner applied for grant of parole for a period of 42 days, by way of application, dated 3rd July, 2024 (Annexure R-2/4) for agricultural purpose.

5. The said application of the petitioner is stated to have been rejected by respondent No. 2, on 31st December, 2024, vide Annexure P-3, without assigning any justifiable reason.

6. On the basis of the above facts, a prayer has been made to quash and set aside the order, by virtue of

which, the request of the petitioner for releasing him on parole, has been rejected. A prayer has also been made to allow his request for parole.

7. When put to notice, the factual position, with regard to conviction and sentence imposed upon the petitioner, has not been disputed by the respondents.

8. It has also not been disputed that the petitioner had applied for grant of 42 days' parole, on 3rd July, 2024, for agricultural purpose.

9. According to the respondents, the request of the petitioner was duly forwarded to the District Authorities, i.e. District Magistrate and Superintendent of Police, Kangra at Dharamshala, District Kangra, H.P. In pursuance of the same, District Magistrate, Kangra at Dharamshala, has not recommended the prayer of the petitioner, on the ground that the victim's mother has objected to grant of parole to the petitioner and has raised severe concern that in case, the petitioner is released on parole, he may harm the victim and her family. The request of the petitioner for parole has also been rejected on the ground that during the petitioner's previous parole,

in January, 2024, on account of his involvement in an altercation, FIR No. 14 of 2024, dated 21st January, 2024, has been registered against him, under Sections 341, 323, 325, 504 and 506 IPC.

10. The other allegations have also been controverted by the respondents.

11. On the basis of the above facts, a prayer has been made to dismiss the writ petition.

12. As per the Custody Certificate, the sentence undergone by the petitioner is five years and eighteen days.

13. The petitioner has applied for 42 days' parole, which was recommended to be rejected by the District Magistrate, Kangra at Dharamshala, vide letter, dated 19th October, 2024. Consequently, the request of the petitioner for grant of parole came to be rejected, vide order dated 31st December, 2024, on account of the objection raised by the mother of the victim and the registration of another FIR against him, during parole.

14. The primary purpose of releasing the convict on parole has elaborately been discussed by the Hon'ble Supreme Court, in **Asfaq versus State of Rajasthan and**

others, reported in **(2017) 15 SCC 55.** Relevant paras-17 to 24, of the judgment, are reproduced, as under:

> *"17. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, albeit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.*
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> *18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest*

in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet

administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform.

22. Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a

person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorized as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious office, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of god conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.

23. There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. {See – Sunil Batra (II) v. State (UT of Delhi) (1980) 3 SCC 488 , Maneka Gandhi v. Union of India

> *(1978) 1 SCC 248 and Charles Sobraj v. Superintendent Central Jai, Tihar, New Delhi, (1978) 4 SCC 104.*
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> *24. It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as "recidivism" reflects the fact that the correctional therapy has not brought in the mind of the criminal. It also shows that criminal is hardcore who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits."*
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> *(self emphasis supplied)*

15. In light of the above decision, this Court would now proceed to consider the fact as to whether the rejection of the petitioner's prayer, seeking his release on parole, is sustainable in the eyes of law.

16. Alongwith the reply, the certificate issued by Pradhan, Gram Panchayat Pihdi, Development Block Dehra, District Kangra, has been annexed, wherein, the Pradhan of the Gram Panchayat has given no objection, in

case, parole, as prayed for by the petitioner, is granted to him.

17. Apart from this, statements of Lambardar of Gram Panchayat Pihidi; Ward Member, Ward No. 6, Gram Panchayat Pihidi; and some villagers have also been placed on record, wherein, they have given no objection for grant of parole to the petitioner.

18. The grounds, upon which, the prayer of the petitioner has been declined by the respondents, is the report made by the District Magistrate, Kangra at Dharamshala. The said recommendation has been made on the ground that the victim's mother has objected to the relief of parole, to be granted to the petitioner, apprehending threat to them and registration of another FIR against the petitioner.

19. As per the report made by ADM, Kangra at Dharamshala, FIR No. 14 of 2024,dated 21st January, 2024, under Sections 341, 323, 504, 506 IPC was registered against the petitioner, during his past parole. The petitioner, in the writ petition, has termed the said case as false and frivolous. The final result of the said FIR

cannot be anticipated, as such, the same cannot be taken to be a negative factor, for considering the relief, for which, the present petition has been filed.

20. While holding so, the view of this Court is being guided by the decision of the Hon'ble Supreme Court in **Criminal Appeal No. 4307 of 2024,** titled as **Mafabhai Motibhai Sagar versus State of Gujarat & Ors., Neutral Citation No. 2024 INSC 806,** wherein, it has been held that every case of breach cannot invite cancellation of order of remission. Although, the Hon'ble Supreme Court was dealing with a case of remission to a convict, but, the principles, laid down by the Hon'ble Supreme Court, in the said case, are fully applicable in the present case also. Relevant para 17 (vi) of the judgment is reproduced, as under:

> *"17. ... ...*
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> *(vi) Registration of a cognizable offence against the convict, per se, is not a ground to cancel the remission order. The allegations of breach of condition cannot be taken at their face value, and whether a case for cancellation of remission is made out will have to be decided in the facts of each case. Every case of breach cannot invite cancellation of the order of remission. The appropriate Government will have to consider the nature of the breach alleged against the convict. A minor or a*

> *trifling breach cannot be a ground to cancel remission. There must be some material to substantiate the allegation of breach. Depending upon the seriousness and gravity thereof, action can be taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNSS of cancellation of the order remitting sentence."*
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> *(self emphasis supplied)*

21. So far as the apprehensions, which have been expressed by the victim's mother, are concerned, reasonable conditions can be imposed, in case, the relief, as claimed in the writ petition, is granted to the petitioner.

22. As regards the registration of FIR against the petitioner, while on parole, mere registration of the FIR cannot be made basis to decline parole to the petitioner, as, the prisoners should be allowed to maintain their family and social ties. They should also be given an opportunity to solve their personal and family problems and to enable them to maintain their links with society.

23. In such situation, in the considered opinion of this Court, rejection order, dated 31st December, 2024, passed by respondent No. 2, is not sustainable in the eyes of law. As such, the same is quashed and set aside. The prayer of petitioner, for grant of parole, is allowed and the

petitioner is ordered to be released on parole, for a period of 42 days.

24. Accordingly, the present petition is allowed, in the following terms:

> *(i) Order, dated 31st December, 2024, rejecting the request of the petitioner for parole, is quashed and set-aside;*
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> *(ii) Respondents are directed to extend the concession of parole to the petitioner, for a period of 42 days, on his furnishing a personal bond in the sum of ₹ 1,00,000/-, with two sureties in the like amount, to the satisfaction of Superintendent of Jail, Lala Lajpat Rai District & Open Air Correctional Home, Dharamshala, District Kangra, H.P.;*
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> *(iii) The petitioner shall also undertake that he shall not cause any threat or inducement to the family of the victim, nor, try to contact them, in any manner;*
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> *(iv) It is made clear that the petitioner shall surrender before Superintendent of Jail, Lala Lajpat Rai District & Open Air Correctional Home, Dharamshala, District Kangra, H.P., on expiry of parole period. In case, the petitioner breaches any of the conditions of parole order or creates any law and order problem, then, the respondents are free to cancel the parole and take action against the petitioner, in accordance with law;*
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> *(v) In peculiar facts and circumstances, of the case, the respondents are at liberty to impose any other just and reasonable condition(s), in addition to the conditions mentioned hereinabove, if deemed fit and proper, to meet the ends of justice;*

(vi) Violation of any of the above conditions shall be treated as a negative factor for consideration of similar prayer, in future.

25. Pending miscellaneous applications, if any, shall also stand disposed of, accordingly.

26. Registry to communicate this order to the Superintendent of Jail, Lala Lajpat Rai District & Open Air Correctional Home, Dharamshala, District Kangra, H.P., for compliance.

(Virender Singh)
Judge

September 12, 2025
(rajni)