

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 873 of 2025****Date of Decision: 31.01.2025****Ajay Kumar****....Petitioner****Versus****State of H.P. & Another****....Respondents*****Coram*****Hon'ble Mr. Justice Rakesh Kainthla, Vacation Judge.****Whether approved for reporting? ¹ No**For the petitioner : Mr. Abhimanyu Thakur,
Advocate.For the respondents : Mr. Manoj Chauhan, Additional
Advocate General.**Rakesh Kainthla, Judge (Oral)**

The petitioner has filed the present petition for seeking parole. It appears from the record that the petitioner had applied for parole vide application dated 08.04.2024 addressed to the Director General of Prisons with the averments that his parents were aged, his wife and two children were residing at home and he wanted to meet his family members for 28 days. Superintendent of Police, Shimla and Additional District Magistrate (Law and Order), Shimla, H.P. reported that the grounds of parole were correct but there was an apprehension of involvement of the petitioner in criminal activities again. The Director General of Prisons rejected the application vide order dated 28.10.2024 because of non-recommendation of the District Authorities.

2. Heard.

3. The application for parole has been rejected only on the ground that the petitioner was involved in the commission of a heinous crime and he is likely to commit the same offence again in case of release on parole. It was laid down by this Court in *Harbhajan Singh v. State of H.P.*, 2019 SCC OnLine HP 3599 that the application for parole can be rejected on the grounds of endangering the security of the State or maintenance of law and order. It was observed:

“17. For rejection of an application for parole, there are two grounds set out in Section 6 of the Act. Firstly, in case a prisoner is released, he will likely to endanger the security of the State. Admittedly, the petitioner has been convicted for the offence committed under Section 302 IPC. But, in no way, it could be inferred that he is likely to endanger the security of the State and even if so, the State has got enormous powers to put restrictions on the petitioner to protect the Security of the State. The second ground is maintenance of public order. In this regard, in the response made by the District Magistrate, there is no reference as to whether he laid threat to the public order.

18. When these two grounds, set out in Section 6 of the Act are not reflected or mirrored in the report of the District Magistrate, we have to presume that the District Magistrate has given its report without application of mind. When a provision or a statute directs an officer to do a particular job in a particular manner, it shall be the duty of that officer to do the said job in that particular manner only. When a District Magistrate is directed to make a report on the basis of assessment in an objective manner, he shall do it in that manner only.

19. Further, the rejection by the Government or the officer authorized by the Government should be on two grounds, namely,

when it is likely to endanger the security of the State or the maintenance of the public order, which are lacking in the instant case.

20. In *Francis Coralie Mullin v. The Administrator, UT Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746, Hon'ble Mr. Justice Marshall has aptly said and we quote. "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate."

21. In *Kharak Singh v. State of UP*, AIR 1963 SC 1295, it has been held that life means more than mere animal existence. Right to live is not restricted to mere animal existence. It means something more than just physical survival.

22. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597, which was followed in *Francis Coralie v. Delhi Administration*, supra it has been held that right to live does not mean mere confinement to physical existence but it includes within its ambit the right to live with human dignity.

23. Seeking parole/remission/pre-mature release or furlough is not a right of a detainee. However, the same has to be considered in the light of the observations made hereinabove. The consideration should always keep in view the rights of the prisoners. The release of a prisoner from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct during incarceration and show a tendency to reform themselves and become good citizens.

24. The Hon'ble Supreme Court in *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55, in para 15 of the judgment has held as under:

"15. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time

provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.”

25. From the discussion made hereinabove, it is clear that the Hon'ble Supreme Court has propounded a reformatory theory. Under the said concept, an opportunity is to be granted to a person to get himself reformed and in case he gets himself reformed, he will be a person to live in the society. It is also worthwhile to extract relevant portion of paras 17 and 18 of the said judgment herein:

“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.....

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.....”

26. Many a times the State takes up a ground that the prisoner has committed heinous offence and granting parole/remission or premature release is likely to endanger the security of the State or the maintenance of the public order. From the above discussion, we feel that the conviction in a serious and heinous crime cannot be the reason for denying the parole per se. 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 a threat to the law and order of the society, should not be released on parole. 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.

27. In *Inder Singh v. State (Delhi Administration)*, (1978) 4 SCC 161, the Hon'ble Supreme Court has held that if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up.

28. In *Shakuntala Devi v. State of Delhi*, (1996) 36 DRJ 545, it has been held as under:

“5. In Poonam Lata v. M.L. Wadhawan, it has been held by their Lordship that ‘Release on parole is a wing of reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen.’”

In Inder Singh v. State, the Apex Court has devised another humanizing strategy, viz. a guarded parole release every year atleast a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by living in a small world of his own cribbed, cabined and confined within the four walls of the prison. In the case of Inder Singh (supra), their lordships directed that:—

“..... if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be enlarged on parole for two months. Their lordships further added that ‘Article 21 of the Constitution in the jurisdiction root for this legal liberalism.’”

4. Therefore, the application for parole could not have been rejected on the grounds mentioned in the order.

5. It has been submitted that the victim is not residing in the village where the petitioner intends to go and the petitioner would undertake not to contact her. This undertaking removes the apprehension of danger to the victim during the parole.

6. The parole cannot be claimed as a matter of right but the same cannot be denied without any justification. The justification provided by the respondent is not sufficient to deny parole to the petitioner. Hence, the present petition is allowed and the petitioner is ordered to be released on bail for 28 days, subject to his furnishing of personal and surety bonds in the sum of ₹1,00,000/- each to the satisfaction of the jail authorities, with an undertaking to surrender after the expiry of the period of parole and not to contact the victim and to commit any other offence during the period of parole. The jail authorities will also be competent to impose any other suitable conditions in the facts and circumstances of the case.

7. The present petition stands disposed of, so also the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Vacation Judge

31st January, 2025
(Nikita)