



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No.1721 of 2019.**

**Date of decision: 26.06.2020.**

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**Raj Kumar Jaswal**

**.....Petitioner.**

**Versus**

**State of H.P. and others**

**.....Respondents.**

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***Coram***

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

**The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**

***Whether approved for reporting?<sup>1</sup> Yes***

**For the Petitioner : Ms. Salochna Rana,  
Advocate, through video  
conferencing.**

**For the Respondents: Mr. Ashok Sharma, Advocate  
General with Mr. Vikas  
Rathore, Mr. Vinod Thakur,  
Mr. Desh Raj Thakur,  
Additional Advocate  
Generals and Mr. Bhupinder  
Thakur, Deputy Advocate  
General, through video  
conferencing.**

**COURT PROCEEDINGS CONVENED THROUGH VIDEO  
CONFERENCE.**

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**Tarlok Singh Chauhan, Judge (Oral)**

The petitioner has filed the instant petition for grant of the following substantive reliefs:

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<sup>1</sup>***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

“i) That the impugned rejection letter dated 11.06.2019 (Annexure P-1) may kindly be quashed and set aside.

ii) That the respondents may kindly be directed to release the petitioner on parole for a period of one month.”

2. Records reveal that the petitioner has been convicted for an offence punishable under Section 306 IPC wherein he was sentenced to undergo imprisonment for four years and the same was upheld by this Court in the appeal preferred by the petitioner which was registered as Criminal Appeal No. 663 of 2008.

3. The request of the petitioner for release on parole has been rejected for want of recommendations by the competent authority.

4. It was in this background that this Court on 07.08.2019 while issuing notice to the respondents passed the following directions:

“Notice. Mr. J.K. Verma, learned Additional Advocate General takes notice for the respondents. He is directed to get a copy of the letter of the District Magistrate on the basis of which the impugned order is passed. Post on 13<sup>th</sup> August, 2019.”

5. It was in compliance to the aforesaid directions that the respondents placed on record the details of the cases in which the petitioner was/has been involved in the cases enumerated hereinbelow.

"1	18/2014 dated 09-02-2014 u/s 451, 504, 506, 427 IPC, PS Gagret	Kailash Kumari W/O Late Sh. Desh Raj R/o Kaloh, Tehsil Amb, District Una(HP).	Raj Kumar Jaswal S/o Sh. Ram Kishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP).	Pending with the Ld. Court ACJM-II, Amb on 15-05-2014.
2	68/2014 dated 20-05-2014 u/s 279, 283, 504, 506 IPC, PS Gagret	Munish Sharma S/O Sh. Bhaghi Rath R/O VPO Gagret, Tehsil Amb, District Una (HP).	Raj Kumar S/o Sh. Ram Kishan, R/O Kaloh, Tehsil Amb, District Una(HP) age 51 years.	Pending with the Ld. Court JMIC-II, Amb from 10-07-2014.
3	78/2014 dated 12-06-2014 u/s 452, 323, 504, 506 IPC, PS Gagret	Kailash Kumari W/O Late Sh. Desh Raj R/o Kaloh, Tehsil Amb, District Una(HP).	Raj Kumar S/o Sh. Ram Kishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP), age 53 years.	Pending with the Ld. Court ACJM, Amb from 08-09-2014.
4	105/2014 dated 04-08-2014 u/s 325, 323 IPC, P.S. Gagret	Kanwar Rohit Jaswal S/O Sh. Raj Kumar, R/O Kaloh, Tehsil Amb, District Una (HP).	Raj Kumar S/o Late Sh. Ram Kishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP), age 53 years.	Acquitted due to compromise between the both parties in the Ld. Court JMIC-II, Amb on 20-09-2016.
5	81/2005 dated 03-05-2005 u/s 341,	Manohar Lal S/O Sh. Sant	Raj Kumar S/o Sh. Ram	Pending with JMIC, Amb.

	323, 506, 427 IPC, PS Gagret	Ram, Caste Brahmin, R/O Indra Nagar, Gagret, Tehsil Amb, District Una (HP).	Kishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP).	
6	15/2011 dated 23-01-2011 u/s 384, 506 IPC, PS Amb	Information of Challani	Raj Kumar @ Raju S/o Late Sh. Ram Kishan Jaswal, R/O Kaloh, Tehsil Amb, District Una(HP), age 50 years.	Information of Challani.
7	28/85 dated 26-06-85 u/s 324, 325, 323, 34 IPC, PS Gagret	Dharam Singh S/O Sh. Sher Singh Caste Rajput, R/o Kaloh, Tehsil Amb, District Una (HP), age 35 years.	1. Raj Kumar S/o Sh. Ram Kishan, Caste Rajput, R/O Kaloh, Tehsil Ghanari, District Una(HP). 2. Angad Singh S/O Sh. Kehar Singh, R/o Kaloh, Tehsil Ghanari, District Una (HP). 3. Harminder Pal Singh @ Pali, R/O Kaloh, Tehsil Ghanari, District Una (HP). 4. Amrit Lal Soni S/O Sh. Mangat Ram, Caste Khatri, R/O Kaloh, Tehsil Ghanari, District Una, (HP).	Acquitted by the Ld. Court SDJM, Amb, on 20-05-1987.

8.	30/2004 dated 16-02-2004 u/s 498 A, 323, 506 IPC, PS Gagret	Sushma Jaswal W/O Sh. Raj Kumar, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una (HP), age 39 years.	Raj Kumar S/o Sh. Ram Krishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP), age 41 years.	Acquitted by the Ld. Court ACJM, Amb, on 10-12-2004.
9	106/2005 dated 29-06-2005 u/s 452, 323, 506 IPC, PS Gagret	Leela Devi, W/O Late Sh. Ram Kishan, Caste Rajput, R/O W. No. 6, Kaloh, Tehsil Amb, District Una (HP).	Raj Kumar S/o Sh. Ram Kishan, Caste Rajput, R/O Ward No.6, Kaloh, Tehsil Amb, District Una(HP).	Convicted with fine to Rs.1000/- along with one year simple imprisonment by the Ld. Court JMII, Amb on 22-12-2006.
10	121/2006 dated 13-07-2006 u/s 306 IPC, PS Gagret	Raman Kumari, W/O Sh. Sudarshan Singh, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una (HP), age 47 years.	Raj Kumar S/O Sh. Ram Kishan, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una(HP).	Convicted with fine to Rs.10,000/- along with one year rigorous imprisonment by the Ld. Sessions Judge, Una, on 07-11-2008.
11	28/2010 dated 24-02-2010 u/s 364, 342, 324, 323, 506, 34, 326 IPC, PS. Gagret	Mohan Lal S/O Sh. Bakeel Chand R/O Pambra, Tehsil Amb, District Una (HP).	1. Raj Kumar S/O Sh. Ram Kishan Jaswal, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una (HP), age 45 years. 2. Sushma Jaswal W/O Sh. Raj Kumar Jaswal, R/O	Pending with the Ld. Court JMII, Amb from 30-04-2010.

				Kaloh, Tehsil Amb, District Una (HP), age 42 years. 3.Rohit Jaswal Sh. Kumar Jaswal, Caste Rajput, R/O Kaloh, Tehsil Amb, District Una (HP), age 21 years.	
12	15/2011 dated 28-02-2011 u/s 323 IPC, PS Gagret	Chanan Singh S/O Sh. Ramu R/O Kaloh, Tehsil Amb, District Una (HP).	Raj Kumar S/O Sh. Ram Kishan Jaswal @ Gorkha, R/O Kaloh, Tehsil Amb, District Una (HP).	Acquitted due to compromise between the both parties in the Ld. Court JMIC-II, Amb, on 03-11-2012."	

6. Now, the moot question is whether in view of the involvement of the petitioner in so many cases, can he still be released on parole.

7. It is more than settled that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The Court cannot exercise these powers, though once the powers are

exercised, the Court may hold that the exercise of powers is not in accordance with rules.

8. The Hon'ble Supreme Court has considered in detail the nature, object, purpose and parameters for grant of parole subject to which parole can be granted in ***Asfaq versus State of Rajasthan and others, (2017) 15 SCC 55***, wherein it was observed as under:

“14. Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.

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.

16. This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:

(i) Both parole and furlough are conditional release.

(ii) Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.

(iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society.

{[See State of Maharashtra and Another v. Suresh Pandurang Darvakar \(2006\) 4 SCC 776](#); and [State of Haryana and Others v. Mohinder Singh, \(2000\) 3 SCC 394](#).

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, al beit 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.

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 categorised 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 offence, 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 good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity 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 Jail, Tihar, New Delhi, \(1978\) 4 SCC 104](#).

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."

9. Bearing in mind the aforesaid exposition of law, it is evidently clear that even though the purpose of granting parole is ingrained in the reformatory theory of sentencing, however, the other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole 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.

10. The grant of parole is not a right vested with the prisoner and is rather a privilege available to the prisoner on fulfilling certain conditions and in view of the long history of cases as set out hereinabove, we really do not find any infirmity with the order passed by the respondents rejecting the claim of the petitioner for grant of parole.

11. Consequently, we find no merit in the instant writ petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.

**(Tarlok Singh Chauhan)  
Judge**

**(Jyotsna Rewal Dua)  
Judge**

**26<sup>th</sup> June, 2020.  
(krt)**