

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 17276 of 2025

Reserved on: 12.12.2025

Date of Decision: 1.1.2026

Sahil Khan ...Petitioner.

Versus

State of H.P. and others ...Respondents.

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Petitioner : Mr Kulwant Singh Gill,
Advocate.

For the Respondent/State : Mr. Lokender Kutlehrria,
Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking to quash the order dated 22.2.2025 and release him on parole.

2. Briefly stated, the facts giving rise to the present petition are that the petitioner was convicted by learned Special Judge-II, Fast Track Court, Sirmaur at Nahan, HP, for the commission of an offence punishable under Section 6 of the

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

Protection of Children from Sexual Offences Act (POCSO). He is undergoing imprisonment in Model Central Jail, Nahan. He applied for parole; however, his application was rejected vide order dated 22.2.2025. The petitioner has a right to reform himself and reunite with the family. Hence, the petition.

3. The petition is opposed by filing a reply asserting that the petitioner had applied for 28 days' parole on 27.8.2024 to meet his family members. His request was forwarded to the District Magistrate and Superintendent of Police, Sirmour at Nahan, as per the provisions of Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 (Prisoners Act) and the Rules framed thereunder. The case of the petitioner was not recommended by District Magistrate, Sirmour at Nahan, because his neighbour, Dharmo Devi, complained about the heated arguments between the petitioner and his father, which disturbed the peace in the locality. The victim's father also stated that the petitioner had harassed the victim's family by making phone calls from the Jail. The competent authority rejected the application for parole after the receipt of these reports, as per the law. Therefore, it was prayed that the present petition be dismissed.

4. I have heard Mr Kulwant Singh Gill, learned counsel for the petitioner and Mr Lokender Kutlehra, learned Additional Advocate General, for the respondent-State.

5. Mr Kulwant Singh Gill, learned counsel for the petitioner, submitted that the petitioner has a right to meet his family members and he is entitled to be released on parole. The parole cannot be denied to the petitioner on irrelevant considerations. The competent authority rejected the petitioner's application without verifying the correctness of the statements. Therefore, he prayed that the present petition be allowed and the petitioner be released on parole.

6. Mr Lokender Kutlehra, learned Additional Advocate General, for the respondent-State, submitted that the competent authority rejected the application for parole after due application of mind. Therefore, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. It was laid down by the Hon'ble Supreme Court in *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55: (2018) 1 SCC (Cri) 390: 2017 SCC OnLine SC 1092, that parole grants an opportunity to

the convict to maintain his links with society. Convicts must breathe fresh air for at least some time. If they maintain good conduct during incarceration and show a tendency to reform themselves, parole should not be denied to them. It was observed at page 60: -

“10. In the first instance, it would be necessary to understand the meaning and purpose of the grant of parole. It would be better understood when considered in contrast with furlough. These terms have been legally defined and judicially explained by the courts from time to time.

11. There is a subtle distinction between parole and furlough. A parole can be defined as the conditional release of prisoners, i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that the parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporary on some basic grounds. In that eventuality, it is to be treated as a mere suspension of the sentence for the time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations, some of which may be as follows:

(i) a member of the prisoner's family has died or is seriously ill, or the prisoner himself is seriously ill; or

(ii) the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or

(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or

(iv) it is desirable to do so for any other sufficient cause;

(v) parole can be granted only after a portion of the sentence is already served.

(vi) if conditions of parole are not abided by, the parolee may be returned to serve his sentence in prison; such conditions may be such as those of committing a new offence, and

(vii) parole may also be granted on the basis of aspects related to the health of the convict himself.

12. Many State Governments have formulated guidelines on parole in order to bring out objectivity to the decision making and to decide as to whether parole needs to be granted in a particular case or not. Such a decision in those cases is taken in accordance with the guidelines framed. Guidelines of some of the States stipulate two kinds of parole, namely, custody parole and regular parole. "Custody parole" is generally granted in emergent circumstances like:

(i) death of a family member;

(ii) marriage of a family member;

(iii) serious illness of a family member; or

(iv) any other emergent circumstances.

13. As far as "regular parole" is concerned, it may be given in the following cases:

- (i) serious illness of a family member;
- (ii) critical conditions in the family on account of the accident or death of a family member;
- (iii) marriage of any member of the family of the convict;
- (iv) delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;
- (v) serious damage to the life or property of the family of the convict, including damage caused by natural calamities;
- (vi) to maintain family and social ties;
- (vii) to pursue the filing of a special leave petition before this Court against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.

14. Furlough, on the other hand, is a brief release from 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 the sentence or the 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, the redemption and rehabilitation of such prisoners for the good of societies must receive due weightage while they are undergoing a sentence of imprisonment.

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

- (i) Both parole and furlough are conditional releases.
- (ii) Parole can be granted in case of short-term imprisonment, whereas 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 the Divisional Commissioner, and furlough is granted by the Deputy Inspector General of Prisons.
- (v) For parole, a 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 a number of times, whereas there is a limitation in the case of furlough.
- (viii) Since furlough is not granted for any particular reason, it can be denied in the interest of society.

(See *State of Maharashtra v. Suresh Pandurang Darvakar*, (2006) 4 SCC 776 : (2006) 2 SCC (Cri) 411 and *State of Haryana v. Mohinder Singh*, (2000) 3 SCC 394: 2000 SCC (Cri) 645.)

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 can maintain his family and social contact. This

reason finds justification in one of the objectives behind sentence and punishment, namely, the 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 out 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 society. Another objective which this theory underlines is that even such convicts have the right to breathe fresh air, *albeit* for (sic short periods. These gestures on the part of the State, along with other measures, go a long way towards the redemption and rehabilitation of such prisoners. They are ultimately aimed at the good of society and, therefore, are in the public interest.

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. The main purpose of such provisions is to afford 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 interests have 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 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 a great number of crimes are committed by the offenders who have been put back on the street after conviction. Therefore, while deciding 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 a tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for the 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 they aspire to live as law-abiding citizens. Thus, the parole programme 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 matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to 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 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 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 a serious or heinous crime is to be, ipso facto, treated as a hardened criminal. The 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 given 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 society. The mere nature of the offence committed by him should not be a factor to deny the parole outright. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of the 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 the recourse made available to the prisoners. Being in a civilised society organised with law and a system as such, it is essential to ensure 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 (2) v. State (UT of Delhi)*, (1980) 3 SCC 488: 1980 SCC (Cri) 777, *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 and *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104: 1978 SCC (Cri) 542.]

24. It is also to be kept in mind that by the time an application for parole is made by a prisoner, he would have spent some time in 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 (sic any change in the mind of the criminal. It also shows that a criminal is hardcore, who is beyond correctional therapy. If the correctional therapy has not been made in itself, in a particular case, such a case can be rejected on the aforesaid ground, i.e. on its merits.

25. We are not oblivious of the fact that there may be hardcore criminals who, by reason of their crime and the methods of dealing with the crime, form associations, loyalties and attitudes which tend to persist. There may even be peer pressure when such convicts are out to commit those crimes again. There may be pressure of being ostracised from delinquent groups, which may lead them to commit the crime again. Persistence in criminal behaviour may also be due to personality traits, most frequently due to pathological traits of personality, such as mental defectiveness, emotional instability, mental conflicts, egocentrism and psychosis. In regard to relapse or recidivism, Frank Exner, a noted criminologist and sociologist, points out that the chances of repeating increase with the number of previous arrests and the interval between the last and the next offence becomes shortened as the number of previous crimes progresses [Frank Exner, *Kriminologie*, pp. 115-120]. The purpose of the criminological study is the prognosis of the improvable occasional offenders and that of the irredeemable habitual offenders and hardcore criminals. To differentiate the recidivists from non-recidivists and dangerous and hard-core criminals from occasional criminals, had been enumerated the following flowsheet:

- (i) Hereditary weakness in the family life.
- (ii) Increasing tempo of criminality.
- (iii) Bad conditions in the parental home.
- (iv) Bad school progress (especially in deportment and industriousness).
- (v) Failure to complete studies once begun.
- (vi) Irregular work (work shyness).
- (vii) Onset of criminality before 18 years of age.
- (viii) More than four previous sentences.
- (ix) Quick relapse of crime.

- (x) Interlocal criminality (mobility).
- (xi) Psychopathic personality (diagnosis of an institutional doctor).
- (xii) Alcoholism.
- (xiii) Release from the institution before 36 years of age.
- (xiv) Bad conduct in the institution.
- (xv) Bad social and family relations during the period of release.

At the same time, as criminality is the expression of the “symptom” of a certain disorder in the offenders, they can be easily reformed if they are rightly diagnosed and the correct treatment is administered to them.”

9. This Court held in *Harbhajan Singh v. State of H.P.*, 2019 SCC OnLine HP 3599, that the nature of the offence cannot be a ground to deny parole when the prisoner's conduct shows a tendency to reform himself. 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 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 the maintenance of public order. In this regard, in the response made by the District Magistrate, there is no reference as to whether he made a threat to 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 an assessment in an objective manner, he shall do it in that manner only.

19. Further, the rejection by the Government or the officer authorised 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 Marshal 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 inmate's interest of the 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. The 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 the right to life 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/premature release, or furlough, is not a right of a detenu. 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 the sentence or the 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 the good of societies must receive due weightage while they are undergoing a 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 society. It is also worthwhile to extract the relevant portions 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, the reformation of the convict.....

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. The main purpose of such provisions is to afford them an opportunity to solve their personal and family problems and to enable them to maintain their links with society..."

26. Many a time, the State takes up the ground that the prisoner has committed a heinous offence, and granting parole/remission or pre-mature 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 parole per se. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interests 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 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 the 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 humanising strategy, viz., a guarded parole release every year, for at least 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 released on parole for two months. ‘Their lordships further added that “Article 21 of the Constitution is the jurisdiction root for this legal liberalism.”

10. Rule 3(2) of the Prisoners Act specifically provides that the District Magistrate and Superintendent of Police shall give their opinion whether the temporary release on parole was opposed on the ground that the prisoner was dangerous to the security of the State or prejudicial to the maintenance of public order. Therefore, the Rule only provides two grounds for opposing the application for parole. The report of the Superintendent of Police mentions that Dharmo Devi told the

police that the petitioner used to engage in loud quarrels with his father. The victim's father stated that the petitioner had made a phone call from the Jail to the victim's family to pressurize them to compromise the matter. However, no material was placed upon the record in support of these statements. The police were asked to verify if any complaint was made by Dharmo Devi or the victim's father to the police; however, no such complaint was found. Therefore, the correctness of these statements is highly doubtful, and they could not have been used to reject the parole.

11. The statements do not satisfy the requirement of the petitioner being dangerous to the security or prejudicial to the maintenance of the public order. Thus, these statements could not have been used to reject the application for parole.

12. In view of the above, the present petition is allowed; the order dated 22.2.2025 rejecting the parole is ordered to be set-aside and the petitioner is ordered to be released on parole for 28 days subject to his furnishing personal bond in the sum of ₹1,00,000/- and two surety bonds of the like amount to the satisfaction of the Superintendent Jail with an undertaking to

maintain good conduct during the period of parole and to surrender before the Superintendent Jail after the expiry of the period of parole. The Probation Officer is also directed to maintain a close watch on the activities of the petitioner and to report any deviation from the direction issued by the Court.

13. The Superintendent Jail is free to impose any other suitable condition at the time of the release of the petitioner.

14. The present petition stands disposed of.

(Rakesh Kainthla)
Judge

1st January, 2026
(Chander)