

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

CWP No : 2286 of 2025
Decided on : 21.02.2025

Prakash Kumar ...Petitioner

Versus

State of Himachal Pradesh & ors. ...Respondents

Coram

HON'BLE MR. JUSTICE RANJAN SHARMA, VACATION JUDGE

¹ *Whether approved for reporting?* **YES**

For the petitioner : Mr. Atul Thakur, Advocate

For the respondent : Mr. Y.P.S. Dhaulta, Additional
Advocate General.

Ranjan Sharma, Judge

Petitioner, Prakash Kumar, a convict has come up before this Court, seeking his temporary release-parole, with the following relief(s):-

“(i). That the respondents may kindly be directed to release the petitioner on parole for a period of 28 days.”

FACTUAL MATRIX:

2. Case as set-up by Learned Counsel is that for offences under Sections 21 & 22 of the Narcotic Drugs & Psychotropic Substances Act [hereinafter referred to as ‘ND&PS Act’], the petitioner

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

was convicted and sentenced on 06.09.2023, by Learned Special Judge, Mandi Division, District Mandi [HP], for rigorous imprisonment for 20 years and to pay a fine of Rs. 2,00,000/-[Rupees Two Lakh], with a default punishment also.

2(i). Facts, as indicated in instant petition, is that mother of the petitioner is critical and she is hospitalized and under treatment in Civil Hospital, Panchkula, which is borne out from the treatment summary and photographs placed on records. It is averred that the petitioner has a brother who is deaf and dumb and petitioner has one daughter and a wife and there is no other male member so as to take care of the mother and to extend facilities as may be required at this stage.

2(ii). It is stated that petitioner was granted parole on two earlier occasions w.e.f. 29.8.2024 to 25.9.2024 and then again for 14 days w.e.f. 31.12.2024 to 22.1.2025 and after expiry of parole period, the petitioner surrendered before concerned

jail authorities.

2(iii). Since the medical condition of petitioners mother became unstable therefore, it was in these circumstances that during subsistence of second parole period, petitioner submitted an application for extension of parole by Email on 15.1.2025 but the *authorities dropped the application for parole on 6.2.2025*, with the plea, that on the ground that petitioner had surrendered after expiry of the parole period on 22.1.2025.

However, since, the health condition of petitioners mother was still unstable therefore, in this back ground, the petitioner [Prakash Kumar] has filed the instant petition through his wife seeking parole for 28 days so as to take care of ailing mother who is bed-ridden/hospitalized as on day.

STAND OF STATE AUTHORITIES:

3. Upon issuance of notice on 11.2.2025, this Court directed the respondents to file Reply/ Status Report within two weeks.

3(i). Upon listing of matter today [21.02.2025], Learned State Counsel has furnished Instructions dated 20.02.2025 [*Taken on Record*], imparted by Director General Prisons & Correctional Services, Himachal Pradesh.

3(ii). The stand of Respondents in Instructions dated 20.02.2025, reads as under:-

“No.7-21/2025-Jail 1062-62

Government of Himachal Pradesh,
“Directorate of Prisons & Correctional
Services”

From

The Director General,
Prisons & Correctional Services,
Himachal Pradesh,

To

The Advocate General,
State of Himachal Pradesh,
Shimla – 171 001

Dated Shimla – 171009 the 20 Feb. 2025

The petitioner had previously availed 28 days parole from 29/08/2024 to 25/09/2024 for his mother's medical treatment. Thereafter, he has again applied for 42 days temporary release on parole on 29/11/2024, to look after and assist in the treatment of his mother. The facts were verified through the SHO, Police Station, Mandi H.P., whose **report dated 2.12.2024 (Annexure: B)** confirmed that **the petitioner's mother was suffering from a brain stroke and was under treatment** at P.G.I Chandigarh.

As per **Para No. 19.12 of the H.P Prison Manual 2021**, a convict is eligible for second parole “after completion of six months of actual imprisonment to be

counted from the date his last return from parole” (Annexure C). The petitioner had not completed the required six months of actual imprisonment from the date of his last return from parole, however, his case was considered by the department on humanitarian grounds, and 14 days parole was granted to the petitioner vide letter dated 31.12.2024 [Annexure D]. Subsequently, the **petitioner requested an extension of 28 days parole on 15/01/2025 via an email [Annexure E]** for necessary care and support of his mother. After examining the request, the **competent authority dropped the parole extension case vide letter dated 6.2.2025 [Annexure F]** as the petitioner had already surrendered to the Jail after the expiry of parole period. As per the report dated 23.01.2025 [Annexure G] of the Superintendent Jail, District Jail Mandi H.P. the petitioner surrendered before the jail on 22.01.2025.

It is, therefore, requested that the Hon’ble High Court of Himachal Pradesh may be apprised accordingly on the next date of hearing fixed for 21.02.2025 in the matter.

Yours faithfully,
Sd/-
For Director General,
Prisons & Correctional Services,
Himachal Pradesh.

3(iii). Perusal of the above Instructions reveal that the claim of petitioner for parole was dropped by respondents on 6.2.2025 [**Annexure F**], annexed with Instructions], primarily on the plea that the second parole cannot be granted before expiry of six months from date of earlier surrender as per Para 19.12 [**Annexure-C**], with Instructions dated

20.02.2025] *supra*.

4. Heard Mr. Atul Thakur, Learned Counsel for petitioner and Mr. Y.P.S. Dhaulta, Learned State Counsel and have gone through the records.

LEGAL POSITION:

5. At the very outset, it would be relevant to take note of the mandate of the Hon'ble Supreme Court, in **Asfaq versus State of Rajasthan and others, (2017) 15 Supreme Court Cases 55**, *enunciating* that the object of granting parole to a convict is towards *reformation of a convict*. It has been held that the convicts have a right to breathe fresh air albeit for short periods. The main purpose of parole is to *provide humanistic approach* towards those lodged in jails so that such convicts can prepare not only to *solve their personal and family problems* but also to *maintain their links with society* and such gestures by the State go a *long way for redemption and rehabilitation of such prisoners*, which are good for the society and are in public interest, in

following terms, which read as under:-

“11. There is a subtle distinction between parole and furlough. **A parole can be defined as 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 parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds.** In that eventuality, it is to be treated as mere suspension of the sentence for 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) **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 sentence is already served;
 - (vi) if conditions of parole are not abided by the parolee he 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 health of convict himself.
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 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.
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.**

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 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. Delhi Administration (1980) 3 SCC 488, Maneka Gandhi v. Union of India and Another (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."*

(Underlining ours)

5(i). So far as respondents are concerned, State Legislature enacted "The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968", providing for temporary release of prisoners subject certain conditions. Section 3 and Section 6 of the Act, read as under:-

"3. Temporary release of prisoners on certain grounds.-

- (1) The Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the Government is satisfied that,-

- (a) **a member of the prisoner's family** has died or **is seriously ill** ; or
 - (b) the marriage of the prisoner's son or daughter is to be celebrated; or
 - (b) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence ; or
 - (d) *it is desirable so to do for any other sufficient cause.*
- (2). The period for which a prisoner may be released shall be determined by the Government so as not to exceed,-
- (a) Where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), two weeks;
 - (b) where the prisoner is to be *released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks*; and
 - (c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks.
- (3). The period of release under this section shall not count towards the total period of the sentence of a prisoner.
- (4). The Government may, by notification, authorize any officer to exercise its

power under this section in respect of all or any of the grounds specified therein.”

6. Prisoners not entitled to be released in certain cases-

Notwithstanding anything contained in sections 3 and 4, **no prisoner shall be entitled to be released** under this Act, if, on the report of the District Magistrate, the Government or an officer authorized by it in this behalf is satisfied that **his release is likely to endanger the security of the State or the maintenance of public order.”**

5(ii). In exercise of the powers conferred by Section 10 of the Act, the State Authorities framed “The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Rules, 1969” (for short ‘Rules’) and Rule 3 reads as under:-

“3. Procedure for temporary release:-

- (1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form 'A-1', Form 'A-2', as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoners'

family.

- (2). The Superintendent of Jail shall forward the application of a prisoner within 24 hours of its receipt along with his report to the District Magistrate of the district to which the convict belongs. The District Magistrate before making any recommendations shall, with the consultation of the Superintendent of Police, verify the facts and grounds on which temporary release has been requested and shall also give their opinion whether the temporary release on parole/furlough is **opposed on ground of prisoner's presence being dangerous to the security of State or prejudicial to the maintenance of Public Order**. The District Magistrate shall complete the process of consultation with the Superintendent of Police and forward his recommendations within one week to the Inspector General of Prisons (Releasing Authority) together with report of Superintendent Jail, who shall decide the parole/furlough case ordinarily within a period of three days from the date of receipt of the recommendations of the District Magistrate.

In the event of the serious illness of close relation i.e. father, mother,

brother, sister, spouse or child of the prisoner, **the application should be processed more expeditiously.** However in the event of death of the close relation i.e. father, mother, brother, sister, spouse or child of the prisoner, the Superintendent of the Jail shall also be the competent authority to release a prisoner on parole for a period not exceeding fifteen days.

The Superintendent of Jail should release a prisoner on parole immediately on receipt of a death certificate, provided he satisfies himself independently within reasonable time about the genuineness of the certificate. For satisfying himself he will approach the concerned Police Station by wireless and verify about the truth of the death and the exact relation of the prisoner with the deceased in order to ascertain the nearness of the relationship.

The Superintendent of Jail shall also ***take into consideration the prisoner's past criminal history and behaviour in the prison*** since admission as recorded in his case file and the likelihood of his not abusing the concession of parole, if granted.

The Superintendent of Jail shall without fail submit the case file of the prisoner

to whom parole is thus granted, to the Inspector General of Prisons enabling him to ensure that the Superintendent has used proper discretion in effecting the release.

- (3). The District Magistrate, while recommending the parole/ furlough cases of Prisoners will specify whether the prisoner shall be required to furnish the security bond or personal bond or both. He shall also indicate the amount of such bond(s) with due regard to the circumstances of cases. Such amount shall not in any event be excessive and shall not be mechanically fixed. While recommending release of the prisoner on his furnishing a personal bond, his family ties and relationships, his reputation, character and monetary conditions and his roots in the community shall be taken into consideration. If after making such enquiry as it may deemed fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form 'B' ordering the temporary release of the prisoner, specifying therein, (1) the period of release of the prisoner, (2) the place or places which the prisoner is allowed

to visit during the period of such temporary release and the amount, as may be specified by the District Magistrate for which the security bond or personal bond shall be furnished by the prisoner in Form 'C' or 'D' respectively.

In case of second and subsequent release on parole/furlough the Releasing Authority shall be competent to order release of the prisoner on the recommendation of Superintendent of Jail concerned **provided that the convict/ prisoner maintained good behavior during the previous release (s) and nothing adverse was reported against him.**

- (4). On receipt of the release warrant the Superintendent of Jail shall inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D, respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail to the District Magistrate.
- (5). On receipt of the information from the District Magistrate that the necessary

bonds have been furnished, the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

- (6) The **Superintendent of Jail shall also immediately forward to the officer in charge of the Police Station** within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the **release certificate** in Form E. The officer in charge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector General.
- (7). The **date of release as well as the date on which the prisoner surrenders** himself under sub-section (1) of section 8 of the Act shall be reported by the Superintendent of Jail to the Inspector General who will inform the Government accordingly.

5(iii). A perusal of Section 3 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 and Rule 3 stipulates that a convict (prisoner) can seek temporary release for meeting

his family members-relations and/or for carrying out any other agricultural operation, or on any other sufficient cause, besides other grounds, as mentioned therein. Section 6 of the Act bars the release of the prisoners, in specified eventualities, in case the release is likely to endanger the security of the State or maintenance of public order. Rule 3 prescribes the procedure and the time stipulations within which an application for parole is to be processed, examined and decided by competent authorities but in certain eventualities an application needs to be processed expeditiously. *Sub rule 3 of Rule 3 provides that in case of second and subsequent release on parole the* Releasing Authority shall be competent to order release a prisoner on parole on the recommendation of Superintendent of Jail provided that the prisoner /convict maintained good behavior during previous release and nothing adverse was reported against him. Section 6 of the Act bars the release of the prisoners, in specified eventualities, in case the

release is likely to endanger the security of the State or maintenance of public order.

ANALYSIS:

6. Taking into account the entirety of the facts and circumstances and Instructions dated 20.02.2025 furnished by State Authorities, this Court is of the considered view, that the *prayer for parole, which was dropped/turned down on 6.2.2025* {Annexure F, with Instructions furnished by State Authorities} deserves to be set-aside and the prayer of petitioner for parole is accepted, in view the illness and bed-ridden condition of his mother, *for the following reasons :-*

6(i). Admittedly, the petitioner is a convict sentenced for rigorous imprisonment for 20 years under ND&PS Act pursuant to the judgment dated 18.9.2023 passed by Learned Special Judge-I, Mandi. The petitioner has undergone 3 years 10 months and 11 days of total sentence [excluding parole] as on 14.02.2025, as per the Custody Certificate on record. Material on record reveals

that petitioner was granted 28 days parole from 29.08.2024 to 25.09.2024 and as per the orders dated 31.12.2024 [Annexure D], was again released on parole for 14 days from 31.12.2024 till date of surrender on 23.1.2025 [Annexure G]. However, during the subsistence of earlier parole and due to the unstable health of mother, the petitioner made an application for extension of parole by Email on 15.1.2025 but the prayer was dropped /turned down on 6.2.2025 [Annexure F], on the ground that as per **Para No.19.12 of Himachal Pradesh Prison Manual, 2021**, a convict becomes eligible for second parole “after completion of 6 months of actual imprisonment to be counted from the date of his last return from parole, by asserting it to have been issued in a casual manner and also by totally ignoring the mandate of law, which is illegal.

6(ii). The stand of State Authorities based on Para 19.12 of the Para No 19.12 of Himachal Pradesh Prison Manual, does not pass the test

of judicial scrutiny for the reasons, that ***firstly***, even on facts of instant case, State Authorities have granted parole to the petitioner twice i.e. for 28 days from 29.08.2024 to 29.05.2024 and was again granted parole for 14 days in terms of orders dated 31.12.2024 to 22.01.2025 ; and ***secondly***, once the State Authorities have granted parole to the petitioner twice between the period from August 2024 till January 2025 and without insisting for requirement of expiry of 6 months period then, the action of the State Authorities in dropping the request for parole for 28 days on 6.2.2025 [Annexure F], is not tenable ; and ***thirdly***, the State authorities cannot be permitted to take the plea based on Para No 19.12 of Himachal Pradesh Prison Manual when, the State Authorities have themselves given a go by to the same and that too in case of the petitioner herein ; and ***fourthly***, State Authorities cannot be permitted to approbate and reprobate qua Para 19.12 of the Manual ; and ***fifthly***, once the

claim of a convict for parole originates and is governed by the Himachal Pradesh Good Conduct Prisoners [Temporary Release] Act and Rules and the Statute and Rules framed thereunder do not place any embargo or restriction that the second parole cannot be considered/granted before expiry of 6 months period from date of surrender after availing first parole then, any such embargo or restriction cannot be permitted to be invoked on the basis of Para No 19.12 of Himachal Pradesh Prison Manual 2021; and **sixthly**, the embargo or condition sought to be invoked on the basis of Para 19.12 of the Himachal Pradesh Prison Manual defeats the object and intent of parole under Himachal Pradesh Good Conduct Prisoners [Temporary Release] Act and Rules ; and **seventhly**, the embargo or condition in Para 19.12 of the Prison Manual cannot operate contrary to and de hors the express mandate of Sub rule 3 of Rule 3 which provides that in case of second and subsequent release on parole, the Releasing

Authority shall be competent to order release a prisoner on parole on the recommendation of Superintendent of Jail *provided that* the prisoner /convict maintained good behavior during previous release and nothing adverse was reported against him; and ***eighthly***, in order to attain the object of the Statute, once the provision of *Sub Rule 3 of Rule 3 entitles a convict/prisoner for second or subsequent release* on parole Rule 3(3) subject to maintenance of good behavior during previous release and if nothing adverse was reported against him and without any added condition attached thereto then, the provision of Para 19.12 of the Prison Manual, which places a restriction contrary to the object and intent of the Statute and the express mandate of sub rule 3 of Rule 3 of the Rules cannot be permitted to operate to the prejudice and disadvantage of the petitioner in instant case ; and ***ninthly***, once the applicable Statute and Section 6 thereof, bars or disentitles a convict/prisoner for release on parole in specified

eventualities i.e. in case the release is likely to endanger the security of the State or maintenance of public order then, the provision of Para 19.12 of the Prison Manual which places a restriction tending to defeat the object/intent and the express mandate of Section 6 of the Act cannot be permitted to operate against the petitioner the in instant case ; and **tenthly**, once the State Authorities have not spelt out any of the eventualities as required under Section 6 of the Act that the temporary release of the petitioner on parole is likely to endanger the security of State or maintenance of public order then, once no such apprehension has been expressed by the State Authorities in the Instructions then, the Impugned Orders dated 6.2.2025 in dropping or in denial or rejection parole to the petitioner in facts of this case is uncalled for being irrational and perverse, which does not stand the test of judicial scrutiny ; and **lastly**, once the object and intent of parole-temporary releasing a convict/prisoner is to enable

a convict to establish the social ties which in itself includes the efforts for taking care of his family including the ailing mother as in this case therefore, this Court, in facts of this case is of the considered view that the Impugned Order dated 6.2.2025 [Annexure F] and the action of the State Authorities in denying the parole to the petitioner is uncalled for and that too when, the Learned Counsel, on instructions of the petitioner through her wife states that the mother of the petitioner is still bed-ridden/hospitalized which is borne out from the photograph on record.

7. Once the conduct and behavior of the petitioner while in custody and even during earlier parole was good and nothing adverse was reported against the petitioner and therefore, the correctional therapy needs to be given a facelift.

8. Depriving a convict of the benefit of parole when, his conduct and behavior was good and nothing adverse was reported against petitioner so as to enable him to move towards reformation and

to re-establish his social ties and family ties for attaining the object of parole needs to be accepted, in facts of this case.

9. Any objection raised by local inhabitants / relative cannot be the sole determinative basis for refusing parole and such an objection raised by local inhabitants/relative cannot be given “pre-dominance and over-weightage” by totally brushing aside relevant considerations i.e. material(s)-inputs-reports-facts and when, nothing adverse regarding the conduct and behavior during custody and even during earlier release was borne out from the records and when, the State authorities have not produced any cogent and convincing material that release of petitioner was likely to be prejudicial to the security of state or maintenance of public order {under Section 6 of the Act} in the instant case. In these circumstances, the decision making process and the action of the Respondents in denying parole to the petitioner does not stand the test of judicial scrutiny being erroneous in law

is held illegal.

10. Case records manifest that once the designated authorities under State Act and Rules have failed to resort to a comprehensive exercise for formation of required opinion, in the context of object and rationale of Parole as mandated by the Statute, Rules and Law in the case of **Asfaq** (*supra*) therefore, the impugned order(s) and the action of State Authorities in denying parole to the petitioner is illegal, arbitrary and it cannot be permitted to operate. Accordingly, the same are set-aside.

11. Submission of Learned State Counsel that parole cannot be claimed as of right is not in dispute but tis Court of the considered view, that even if the parole is a concession, then also, the authorities are bound to exercise its discretion in fair, impartial and judicious manner, by taking a holistic view after taking into account the mandate of the Act and Rules and all other relevant factor(s)/materials {i.e. the good conduct

and behavior and nothing adverse existed during his custody and even during earlier release and nothing cogent and convincing existed revealing that the temporary release is likely endanger the security of State or the maintenance of public order therefore, the denial of parole to petitioner cannot operate to the prejudice and disadvantage of petitioner so as take away and deprive him of attending to or meeting out the extenuating circumstances, in facts of this case.

12. In order to maintain a balance between the claim of the petitioner for parole vis-à-vis the apprehension of the State Authorities, upon grant of parole, this Court *imposes stringent conditions* as indicated hereinunder for compliance by the petitioner.

CONCLUSION AND DIRECTIONS:

13. In view of the above discussion and for reasons recorded hereinabove, the instant petition is allowed, in the following terms:-

(i) Communication dated 6.2.2025,

[Annexure F annexed with Instructions dated 20.02.2025], dropping / turning down the parole request of petitioner is quashed and set-aside ;

- (ii) Respondents are directed to reconsider the case of the petitioner for parole in view of the extenuating circumstances [ailment of bed-ridden /hospitalized mother], as per H P Good Conduct Prisoners [Temporary Release] Act-Rules, including Rule 3(3) regulating claim for second and subsequent parole inaccordance with law, expeditiously ;
- (iii). Upon consideration, being in order, Respondents-State Authorities shall extend parole to the petitioner for period of 14 days; [w.e.f. 26.2.2025 till 13.3.2025 [3.00 P.M], subject to furnishing a personal bond in sum of Rs 25000/- [Rs Twenty Five Thousand only] -with one sureties in like amount to the satisfaction of Learned Trial Court concerned ;
- (iv). During parole, petitioner shall neither involve himself nor shall abet the commission of any offence hereinafter. Involvement in any offence whatsoever or its abetting thereof shall entail automatic cancellation of concession

of parole granted in terms of this order ;

- (v). Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to Superintendent (Jails) concerned;
- (vi). Petitioner shall not jump over the parole and also shall not leave the country;
- (vii). Learned Trial Court or the State Authorities, including Superintendent Jails, District Jail Mandi is free to impose any other condition on the petitioner before or during parole period hereinafter;
- (viii). State Authorities are free to move this Court for seeking alteration/ modification or cancellation of parole in case, of violation of any condition imposed in terms of this order or by Learned Trial Court or Supdt Jails concerned or if fact situation of instant case or circumstances so necessitate, at any time hereinafter ;
- (ix). Costs made easy for respective parties herein.

14. Registry is directed to furnish a copy of this judgement to the Director General, Prisons

and Correctional Services, Himachal Pradesh Shimla and District Magistrate/Deputy Commissioner and Superintendent of Police Mandi District, at Mandi (HP) through Email and/or other permissible modes for compliance.

In aforesaid terms, the instant petition and all pending application(s), if any, shall stand disposed of.

February 21, 2025
(Shivender)

(Ranjan Sharma)
Vacation Judge