

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

CWP No : 2609 of 2025
Decided on : 11.04.2025

Kashish Gulyani ...Petitioner

Versus

State of Himachal Pradesh & ors. ...Respondents

Coram:

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner : Mr. Karan Kapoor, Advocate.
For the respondents : Mr. Rakesh Dhaulta,
Additional Advocate General,
for respondents No.1 to 3-
State.

Per Ranjan Sharma, Judge

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

- “A. That the respondent may kindly be directed to provides the copy communication against the application for parole, filed by the petitioner or decide his case.
- B. The petitioner may kindly be release on parole for a period of 28 days.”

FACTUAL MATRIX:

2. Case as set-up by Learned Counsel is

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

that an FIR No.251/2022, dated 26.06.2022, was registered against the petitioner under Section 22 of the Narcotic Drugs & Psychotropic Substances Act [*hereinafter referred to as 'ND&PS Act'*]. This accusation was put to trial resulting in conviction and sentence by the Learned Special Judge-II, Kullu [HP] vide judgment dated 11.10.2023, mandating the petitioner to undergo rigorous imprisonment for ten years and to pay a fine of Rs 1,00,000/- [Rupees One Lakh], with a default sentence of rigorous imprisonment for a period of one year for failure to deposit the fine.

2(i). The case set-up is that the petitioner had undergone two years, seven months and twenty five days of sentence and he had not availed the benefit of parole earlier. It is stated that the petitioner submitted an application for parole for 28 days on 29.08.2004, (Annexure P-2), for meeting the family members but no action was taken on the said application and therefore, instant petition was filed.

PROCEEDINGS BEFORE THIS COURT:

3. Upon filing of the instant petition on 24.02.2025, the matter was listed on 25.02.2025 when, this Court directed the competent authority to take a decision on the parole application dated 29.08.2024 [*Annexure P-2*], with directions to file reply to the instant petition.

3(i). Pursuant to the issuance of notice on 25.02.2025, the Respondent No.2-Director of Prison and Correctional Services Shimla has filed a reply-affidavit dated 04.04.2025.

Perusal of the reply-affidavit admits the factual narration of events that the petitioner was convicted vide judgment dated 11.10.2023 under Section 22 of ND&PS Act, by the Learned Special Judge-II, Kullu. Reply-affidavit states that the fine amount has not been deposited by the petitioner till 25.05.2025. It is averred in the reply that the conduct/behavior of the petitioner in jail has been found good as per the Custody Certificate [*Annexure R-2*].

3(ii). Reply indicates that the petitioner applied for parole for 28 days on 29.8.2024 **[Annexure P-2]** and the matter was processed thereafter. It is averred that upon receipt of application for parole District Magistrate, Alwar, [Rajasthan] had sought a report from Superintendent of Police, Alwar [Raj], who reported on 26.11.2024 **[Annexure R-3/T]** that in case petitioner is granted parole then, there is no guarantee that petitioner will surrender after completion of parole period and based on this possibility, the District Magistrate Alwar [Rajasthan] forwarded his non-recommendation on 27.12.2024 **[Annexure R-3/T]** to competent authority-Respondent No.2, in the instant case.

3(iii). Based on the reports of Superintendent of Police and resultant non-recommendation by District Magistrate, Alwar [Rajasthan] vide Annexure R-3 *supra*, the competent authority-Respondent No 2 passed an order on 18.03.2025 **[Annexure R-4]** rejecting the claim of petitioner for parole, due to non-recommendation of case by District Authorities

that in case the petitioner is released on parole there is possibility of his absconding from parole.

The communication dated 18.03.2025 **[Annexure R-4]** rejecting the parole request, reads as under:-

Annexure R-4
Dated 18.3.2024

“No.4-45/2025-Jails-3477-1593
Government of Himachal Pradesh
“Directorate of Prisons & Correctional Services”

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

To The Superintendent Jail,
Model Central Jail, Nahan,
District Sirmour, (H.P).
Dated Shimla-171009, the

Subject:- Regarding parole case of convict Kashish
Gulyani S/o Sh. Prem Lal.

Memo,
Reference to letter No.163 dated
27/12/2024 from the District Magistrate, Alwar,
District Alwar, Rajasthan.

In this context, the grounds of the application were got verified through the concerned District Authorities. The parole case of the convict has not been recommended by the concerned District authorities on the grounds that **convict has committed as heinous crime and he will not surrender, if released on parole and the possibility of his absconding from parole cannot be ruled out.**

Therefore, keeping in view of the non-recommendations of the District Authorities, the parole case of convict Kashish Gulyani S/o Sh. Prem Lal is hereby rejected. The convict be informed accordingly.

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

4. Heard, Mr. Karan Kapoor, Learned Counsel for the petitioner and Mr. Rakesh Dhaulta, Learned State Counsel for respondents No. 1 to 3 and have gone through the material on record.

LEGAL POSITION:

5. Before adverting to the claim-controversy in instant case, it would be necessary to have a recap of the mandate of the Hon'ble Supreme Court from time to time.

5(i). The Hon'ble Supreme Court in **Poonam Lata** versus **M. L. Wadhawan, (1987) 3 SCC 347**, has outlined the intent, object and scope of parole to a convict, mandating that release on parole is a wing of the reformatory process so as to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is a partial liberty granted conditionally to a convict so as to enable him to move towards reformation in the following words:

8. There is no denying of the fact that preventive detention is not punishment and the concept of serving out a

sentence would not legitimately be within the purview of preventive detention. The grant of parole is essentially an executive function and instances of release of detenus on parole were literally unknown until this Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. As a consequence of the introduction of parole into the penal system, all fixed terms sentences of imprisonment of above 18 months are subject to release on license i.e. parole after a third of a period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. **It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to**

reform the promise the convict released on parole is directed to surrender to custody. It follows from these authorities that **parole is the release of a very long term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his incarceration in the event of misbehavior.**

5(ii). While dealing with the object of parole, it has been held by the Hon'ble Supreme Court in **State of Maharashtra and another** versus **Suresh Pandurang Darvakar, (2006) 4 SCC 776** that parole is to be granted on sufficient cause being shown, so as to enable the prisoner to have family association, family and social ties and to avoid ill-effect of continuous prison life.

5. According to the learned counsel for the appellants, the High Court has not kept in view Rules 4(4) and 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959 in short "the Rules"). The said Rules have been framed in exercise of powers conferred by clauses (5) and (28) of Section 59 of the Prisons Act, 1894 (in short "the Act") in its application to the State of Maharashtra as it stood then. The expression "furlough system" is defined in clause (5-A) of Section 3 of the

Act, while the expression “parole system” is defined in clause (5-B) of the said provision. The **underlying object of the Rules relating to “parole” and “furlough”** have been mentioned in the report submitted by All-India Jail Manual Committee and the objects mentioned in Model Prison Manual. The “furlough” and “parole” have two different purposes. **It is not necessary to state the reasons while releasing the prisoner on furlough, but in case of parole reasons are to be indicated in terms of Rule 19.** But release on furlough cannot be said to be an absolute right of the prisoner as culled out from Rule 17. **It is subject to the conditions mentioned in Rules 4(4) and 6.** Furlough is allowed periodically under Rule 3 irrespective of any particular reason merely with a view **to enable the prisoner to have family association, family and social ties and to avoid ill-effect of continuous prison life.** Period of furlough is treated as a period spent in prison. But Rule 20 shows that period spent on parole is not to be counted as remission of sentence. **Since the furlough is granted for no particular reason, it can be denied in the interest of society; whereas parole is to be granted only on sufficient cause being shown.**

9. **Unfortunately, the High Court does not appear to have addressed itself to these relevant aspects.** It took note of the fact that nobody was willing to stand surety for release of the respondent. The High Court directed that he can be released on furnishing

surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. There is another requirement. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rules 6. **Rule 4 (4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. The High Court has not recorded any finding that the report of the District Magistrate and/or Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquility.**

10. Looked at from any angle, **the High Court's order is indefensible. The same is set aside.** It is, however, open to the respondent to apply for release on fulfillment of the requisite conditions as prescribed in the Rules. Needless to say that the same shall be considered in its own perspective in accordance with law. The appeal is allowed

5(iii). The Hon'ble Apex 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 the 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 behavior 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 recognize 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 behavior shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.**

21. ***To sum up, in introducing penal reforms, the State that runs the***

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

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

to commit crimes again and again. **Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorized as a hardened criminal. In his case consideration should be** as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. **Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced.**

We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious 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(iv). Underscoring the object of temporary release, be it parole or furlough, the Hon'ble Supreme Court after relying upon the judgement law in case of Asfaq (supra), has mandated in **State of Gujrat versus Narayan, (2021) 20 SCC 304**, that while dealing with the claim for parole/furlough a balance has to be maintained between two competing interests in reforming the convict vis-a vis the public purpose and interests of society on the other:

20. The principles may be formulated in broad, **general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context.** The principles are thus:

(i) Furlough and parole envisage a **short-term temporary release from custody;**

(ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;

(iii) The grant of furlough is to **break the monotony of imprisonment** and to **enable the convict to maintain continuity with family life and integration with society;**

(iv) Although furlough can be claimed

without a reason, the prisoner does not have an absolute legal right to claim furlough;

(v) The **grant of furlough must be balanced against the public interest** and can be refused to certain categories of prisoners.

21. The furlough application of the respondent was rejected by the DGP by an order dated 8 May 2021. The DGP relied on the concurrent opinion of the ACP, DCP and Jail Superintendent to deny the grant of furlough, based on the following circumstances: (i) *the gravity of the offences* that the respondent has been convicted of, including, Sections 376 (2)(c), 377, 354, 504, 506(2), 508 of the IPC; (ii) *the criminal misconduct of the respondent, during the trial, including attempts to bribe public officials; threatening, assaulting and murdering of 21 witnesses by followers of the respondent; threatening police officials and inspectors of the Income Tax Department;* (iii) *mass following of the respondent willing to commit offences at the instance of the respondent; and (iv) illegal activities while in custody, such as keeping a mobile phone and attempting to establish contact with outsiders.*
23. The DGP has invoked Rules 4(4), 4(6) and 4(10) of the Rules to dismiss the furlough leave application. Rule 4(4) of the Rules provides that **prisoners whose release is not recommended by the Commissioner of Police on grounds of public peace and tranquility may not be considered eligible for furlough.** Rule 4(6) provides for rejection of furlough leave where the conduct of the prisoner is not satisfactory and

Rule 4(10) provides that prisoners who have escaped, or attempted to escape from lawful custody or have defaulted in surrendering, may not be eligible for furlough.

25. **Turning now to Rule 4(6) of the Rules, the Jail Superintendent has given a negative opinion based on the fact that the respondent kept a mobile phone inside the jail illegally and attempted to make contacts with the outside world. Rule 4(4) of the Rules provides for denial of furlough on grounds of disturbance to public peace and tranquillity.** The order dated 8 May 2021 has adduced a number of circumstances which cumulatively indicate that the release of the respondent on furlough may lead to a violation of public peace. The order refers specifically to the threat he and his followers pose to the complainant and other persons who deposed at the trial. An attempt has been made to threaten and suborn the investigating team and the witnesses. The respondent and his father have a mass following of persons who owe loyalty to them and there is a reasonable apprehension of a disruption of public peace and tranquillity. During the trial, attempts have been made to bribe public officials. The conduct after the trial, in jail, has not been shown to be above reproach. The respondent was released earlier this year to accommodate a genuine need to attend to his mother's health at the relevant time. **Based on this, we are unable to agree with the line of reasoning of the High Court.**

26. It has been urged that the objections mentioned in the order dated 8 May 2021 were raised by the authorities to the grant of furlough in December 2020 in spite of which the High Court allowed the plea for furlough. We do not find merit in this submission. The previous order of the High Court did not deal with these submissions. The order only referred to the fact that the respondent's mother was suffering on account of a cardiac arrest and granted furlough on this basis. The Solicitor General in fact stated that the earlier proceedings were not contested before the High Court since the ground for furlough then was the ill-health of the mother of the respondent. **The opinion of the Sanctioning Authority under the Rules does not suffer from perversity nor does it consider material extraneous to the Rules governing the grant of furlough.**

5(v). While dealing with claim for furlough [which in Respondent State is placed akin to parole, both being temporary release under the State Act, as detailed hereinbelow] in case of a life convict, the blanket denial of furlough [or parole, as the case may be] was disapproved. Parole/furlough were lawful consequences of good conduct. Denial of parole/furlough tends to take away an incentive or motivation for good conduct.

The requirement of maintaining good conduct or reformative approach or incentive for good conduct cannot be permitted to whittle down. In case, a convict maintains good conduct, parole/furlough cannot be denied as a matter of course, in **Atbir versus State (NCT Delhi), (2022) 13 SCC 96**, in the following terms :-

28. On a **close look at the decision in the case of Chandra Kant Jha (supra), it appears that the observations of this Court in the case of Asfaq (supra)** to the effect that 'Furlough is granted as a good conduct remission' were taken by the High Court as decisive of the matter and leading to the conclusion that furlough is available only if remission is available. **With respect, we are unable to agree with this line of reasoning of the High Court.** Those observations of this Court in paragraph 14 on the decision in Asfaq (supra) cannot be read in isolation and cannot be read to mean that getting remission is a pre-requisite for obtaining furlough. **The whole of the scheme of granting furlough is based on the approach of reformation and as incentive for maintaining good conduct.**
30. Viewed from any angle, we are satisfied that the logic and **reasoning of the High Court in the case of Chandra Kant Jha (supra), which has been followed in the order impugned, cannot be approved.**

31. In other words, even if the appellant is to remain in prison for the whole of remainder of his life, the expectations from him of good conduct in jail would always remain; and **the lawful consequences of good conduct, including that of furlough, cannot be denied**, particularly when the same has not been prohibited in the order dated 15.11.2012. We need not elaborate to say that **depriving of even the concession of furlough and thereby taking away an incentive / motivation for good conduct would not only be counter-productive but would be an antithesis to the reformative approach otherwise running through the scheme of Rules of 2018.**
33. Thus, looking to the concept of furlough and the reasons for extending this concession to a prisoner lead us to hold that even if a prisoner like the appellant is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, **neither the requirements of his maintaining good conduct are whittled down nor the reformative approach and incentive for good conduct cease to exist in his relation. Thus, if he maintains good conduct, furlough cannot be denied as a matter of course.**
34. We would hasten to observe that whether furlough is to be granted in a given case or not is a matter entirely different. Taking the case of the appellant, he is a person convicted of multiple murders. Therefore, the requirement of Rule 1225 of the Rules of 2018 may come into operation. However, **it cannot be said that his case would never be considered**

for furlough. Whether he is to be given furlough on the parameters delineated therein or not is a matter to be examined by the authorities in accordance with law.

35. In view of the above, **while disapproving blanket denial of furlough to the appellant** in the orders impugned, we would leave the case of the appellant for grant of furlough open for examination by the authorities concerned in accordance with law.
36. For what has been observed, discussed and held hereinabove, this appeal succeeds and is allowed; the **impugned order dated 02.08.2021 as passed by the High Court of Delhi and the order dated 21.10.2019 as passed by the Director General of Prisons, Prison Headquarters, Tihar, Janakpuri, New Delhi are set aside;** and the case of the appellant for grant of furlough is restored for reconsideration of the said Director General of Prisons....”

STATUTORY PROVISIONS IN RESPONDENT STATE:

- 6.** So far as Respondent State is concerned, the State Legislature enacted “The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968”, providing for temporary release of prisoners subject to certain conditions. Section 3, 6, 8 and Section 9 of the Act, reads 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.”**

8. Liability of prisoner to surrender on expiry of release period and consequences of overstaying.-

- (1) On the *expiry of the period for which a prisoner is released under this Act, he shall surrender* himself to the Superintendent of the jail from which he was released.
- (2) If a *prisoner does not surrender* himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, *he may be arrested by any police officer without a warrant* and shall be remanded to undergo the unexpired portion of his sentence.

- (3) If a prisoner surrenders himself to the Superintendent of the jail from which he was released *within a period of ten days of the date on which he should have so surrendered*, but fails to satisfy the Superintendent of the jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for which he was released, *all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of the jail, namely,-*
- (a) a maximum cut of five days' remission for each day of overstay;
 - (b) stoppage of canteen concession for a maximum period of one month;
 - (c) withholding concession of either interviews or letters or both for a maximum period of three months;
 - (d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;
 - (e) warning; and
 - (f) reduction from the status and grade of "Convict Watchman" or "Convict Overseer".

9. Penalty for failure to surrender.-

Any prisoner who is liable to be arrested under sub-section (2) of section 8, shall be punishable with imprisonment of either description which may extend to two years or with fine or with both.

Explanation.- The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.

6(ii). In exercise of powers conferred by Section 10 of the Act, the State Authorities has 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.

6(iii). A perusal of Section 3 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 and Rule 3 stipulate 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. Rule 3 prescribes the procedure and the time line within which an application for parole is to be processed, examined and decided by the competent authority. Rule mandates that in certain eventualities, an application needs to

be processed expeditiously. Sub Rule (2) of Rule 3 provides after receipt of report from Superintendent of Police concerned, the District Magistrate is bound to **undertake consultation** with the Superintendent of Police and **verify the facts and grounds** on which temporary release has been requested. Thereafter, District Magistrate is **bound to give his opinion** as to 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* and after completing the process of consultation with the Superintendent of Police, the District Magistrate shall forward his recommendations within one week to **Inspector General of Prisons (Releasing Authority), who shall then 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 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 the 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.* Thus, the Act and the Rules provide a **procedure containing checks and balances** while dealing with the claim of a convict for parole/furlough.

ANALYSIS:

7. Taking into account the entirety of the facts and circumstances and the reply-affidavit dated 04.04.2025 filed by the State Authorities, this Court is of the considered view that the rejection orders dated 18.03.2025 [*Annexure R-4*], denying the parole to the petitioner, deserves to be set-aside and the prayer of the petitioner

for parole is accepted, *for the following reasons :-*

7(i). Admittedly, the petitioner is a convict who is undergoing sentence imposed upon him by Learned Special Judge-II, Kullu vide judgment dated 11.10.2023 for rigorous imprisonment for a period of 10 years with fine, with a default penalty for non-deposit of fine also. It is not in dispute that the petitioner had undergone sentence of 02 years 07 months and 25 days as per Custody Certificate dated 22.02.2025 [*Annexure P-1*]. It is not in dispute that the petitioner applied for parole, vide application dated 29.08.2024 [***Annexure P-2***] for 28 days so as to enable him to meet his family members consisting of old parents, a wife and three years old daughter. It is averred in the application that the petitioner belongs to a poor family and in view the poverty coupled with the fact that his native place (Alwar, in Raj) and place of detention (Nahan, in HP) are far away, therefore the family members cannot come over to meet the petitioner at Nahan

[Sirmaur] and in these circumstances, the prayer for parole was made by the petitioner.

The rejection orders dated 18.03.2025 [Annexure R-4] was passed by the State Authorities, on the ground, that the Superintendent of Police and the District Magistrate concerned did not recommend the case of the petitioner for grant of parole ; is unsustainable, *for the reason*, that ***firstly***, the rejection order certainly amounts to defeating the intent of the enactment as applicable in the Respondent State ; and ***secondly***, the rejection order tends to render the object and mandate of law on parole as redundant and otiose, which cannot be permitted in any eventuality ; and ***thirdly***, the rejection order denying parole has been passed in a casual and cryptic manner ; and ***fourthly***, the District Magistrate *has not resorted to any consultation* with the Superintendent of Police for verifying the facts and grounds on which temporary release is requested as mandated by Sub Rule 2 of Rule 3 ; and ***fifthly***, even after

receipt of report from concerned Superintendent of Police, the *District Magistrate has not given any opinion* as whether the temporary release was being opposed on the ground that the release was dangerous to security of State or prejudicial to maintenance of public order. After forming his opinion, the District Magistrate was bound to forward his recommendations to the Competent-Releasing Authority. In instant case, the District Magistrate has neither given his opinion nor applied his mind to the twin requirements as to whether the grant of parole would be dangerous to security of State or prejudicial to maintenance of public order or not in the light of Section 6 and Rule 3 and *thus non-adherence to the above twin pre-requirements is uncalled for and deprecated* ; and **lastly**, the action of Respondent No 2-Competent Authority in rejecting the parole request of petitioner *without independently applying its mind to fact-situation of instant case* and the twin preconditions which disentitle a convict

for parole under section 6 and rule 3, by ignoring the underlying intent and object of granting parole in terms of the Statute and the mandate of law, as referred to above by not taking a holistic view of the entire matter, so as to give an opportunity to the petitioner-convict to move a step towards reformation, for the reason that a convict has life and a heart and a right to breathe fresh air. Even the petitioner-convict has a fundamental right to live with dignity. Every conviction cannot be the sole basis for complete severance of a convict from maintaining family and social ties which shall be an effort and an attempt towards transformation of a convict into a useful citizen.

In the instant case, once the petitioner requested for parole so as to meet the family members, as he had not met the family for last *more than two years and seven months now*, amounts to defeating the underlying intent and object of parole under the Statute and also tends to negates the mandate of law declared by

the Hon'ble Supreme Court, as referred to above. Thus, action of State Authorities, which deprives or takes away the right of the petitioner for parole, so as to meet his family members for maintaining family and social ties is an attempt to scuttle the efforts towards reformation of the petitioner. In these circumstances, rejection order, in facts of instant case are quashed and set-aside.

7(ii). The rejection order dated 18.03.2025 [*Annexure R-4*], denying the parole to the petitioner does not stand the test of judicial scrutiny for the reasons:-

In the teeth of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act 1968 and Section 6 thereof, a convict is disentitled for temporary release, in case, the release is likely to endanger the security of State or maintenance of public order. In the instant case, the State Authorities have neither spelt out any adversial eventualities under Section 6 of the Act that the

temporary release of petitioner on parole is likely to endanger the security of State or maintenance of public order nor placed on record any cogent and convincing material to assert the disentitlement of petitioner for parole under Section 6 of the Act. A mere bald averment in the report(s) cannot be made the basis for disentitling the petitioner-convict of the benefit of parole. Thus, in absence of any such adversial eventuality and any cogent supportive material disentitling the petitioner from parole under Section 6 and Rule 3, the Rejection Orders dated 18.03.2025 [*Annexure R-4*] denying parole does not stand the test of judicial scrutiny, in fact-situation of instant case.

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

7(iv). Depriving a convict of the benefit of parole when, his conduct and behavior was good

and nothing adverse was reported against the 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.

7(v). Any objection raised by either the stakeholders {concerned Superintendent of Police or the District Magistrate] or the local inhabitants /relative(s), cannot be the sole determinative basis for refusing parole and any such report or objection cannot be given “pre-dominance and “over weightage” by totally brushing aside the relevant considerations within the ambit of Section 6 of the Act when, nothing adverse regarding the conduct and behavior during custody was borne out from the records and once the State authorities have neither produced nor spelt out any cogent and convincing material that release of petitioner was likely to be prejudicial to the security of State or the maintenance of public order {under Section 6 of the Act}. In these circumstances,

the decision-making process does not conform to the Statute and the Statutory rules, is perverse and is also contrary to established principles for granting parole/furlough as mandated by the Hon'ble Supreme Court in the cases of **Poonam Lata, Suresh Pandurang Darvakar, Asfaq, Narayan and Atbir (supra)** and also the mandate of this Court then, the rejection order denying parole to the petitioner is interdicted by this Court in these proceedings. Ordered accordingly.

8. 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 the State Authorities in denying parole to the petitioner is illegal, arbitrary and it cannot be permitted to operate. Accordingly, the same are set-aside.

9. Submission of Learned State Counsel that parole cannot be claimed as of right.

The above contention of the Learned State Counsel is to be examined in the context, that even if parole is a concession, then also, the designated authorities are bound to exercise its discretion in a fair, impartial and judicious manner, by taking a holistic view, after taking into account the mandate of the Act/Rules and all other relevant factor(s)/materials including the good conduct and behavior during custody and the fact as to whether the designated authorities have not pointed out any cogent and convincing material disentitling the petitioner for parole on the ground that his temporary release is likely to endanger the security of State or maintenance of public order. *A blanket denial of parole/furlough needs to be disapproved for the reason, that the concession of parole is a lawful consequence of good conduct. Denial of parole shall certainly amount to taking away the incentive/motivation*

*for good conduct and would be counter-productive and will be an antithesis to the reformatory approach and denial of parole/furlough shall whittle down the incentive for maintaining good conduct or reformatory approach, and if a convict maintains good conduct, parole/furlough cannot be denied as a matter of course, in view of the mandate of law declared by the Hon'ble Supreme Court in the case of **Atbir (supra)**.*

Thus, in these circumstances, the rejection order dated 18.3.2025, {Annexure R-4}, denying parole cannot operate to the prejudice and disadvantage of petitioner so as to take away and deprive him of meeting his family members in facts of instant case.

10. 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.

11. Even, a perusal of report of the Superintendent of Police, Alwar [Rajasthan] dated 26.11.2024 [*Annexure R-3*] and non-recommendation report furnished by District Magistrate, Alwar [Rajasthan] dated 27.12.2024 [*Annexure R-3*], in considered view of this Court has been passed in a casual manner.

Mere possibility that the petitioner may abscond is not a ground to deny parole and such a plea certainly amounts to rejecting the claim on extraneous considerations. Even, as per “The Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968”, a convict shall be disentitled for parole/furlough in case his release is likely to endanger the security of the State or maintenance and public order as per Section 6 of the Act. Further, Section 8 and 9 of the Act, takes care of such an eventuality mandating that if a prisoner overstays the parole period or fails to surrender on expiry of parole period then, the penal consequences were to entail

leading to imprisonment upto two years or fine. Moreover, the apprehension-possibility expressed by the Superintendent of Police and District Magistrate Alwar [Rajasthan] that the petitioner may abscond can be adequately safeguarded by incorporating a condition in this order by mandating that non-surrender shall entail penal consequences under the statute and also by imposing other stringent conditions in this order hereinunder.

Thus, the report(s) of the Superintendent of Police and District Magistrate, Alwar [Rajasthan] leading to the passing of rejection order dated 18.03.2024 [Annexure R-4] does not stand the test of judicial scrutiny, in facts of instant case.

12. In similar eventualities, this Court had granted the concession of parole in similar fact-situation in **CWP No. 4351 of 2023** titled as **Abshishek @ Shekhu versus State of Himachal Pradesh and others**, decided on 02.08.2023; **CWP No.5289 of 2023** titled as **Vijay Singh versus State of Himachal Pradesh and others**,

decided on 31.08.2023; **CWP No.528 of 2023** titled as **Gopal Singh versus State of Himachal Pradesh and others; CWP No. 9339 of 2023** titled as **Sewak Ram @ Sanjeev versus State of Himachal Pradesh & Others**, decided on 18.12.2023; **CWP No.2885 of 2023** titled as **Sunil Kumar versus of Himachal Pradesh & Others**, decided on 03.04.2025; and in **CWP No. 3338 of 2025** titled as **Kedar Singh versus State of Himachal Pradesh & Others**, decided on 07.04.2025.

CONCLUSION AND DIRECTIONS:

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

- (i) Rejection order dated 18.03.2024 [Annexure R-4, disallowing the parole request of the petitioner is quashed and set-aside ;
- (ii) Respondents-State Authorities shall re-consider the entire matter expeditiously ;
- (iii). Upon reconsideration, the Respondents State Authorities shall release the

petitioner on parole for 28 days in pursuance to his application dated 29.08.2024 [Annexure P-2] w.e.f. 24.04.2025 to 22.05.2025 ;

- (iv). As a sequel to directions (i) to (iii) supra, the petitioner shall surrender before concerned jail authorities i.e. Superintendent Jail, Model Central Jail, Nahan, District Sirmour [HP], on 23.05.2025, before 3:00 p.m.;
- (v). Release of parole shall be subject to furnishing a personal bond by petitioner to the tune of Rs 25,000/- [Rupees Twenty Five Thousand] with one surety of his native place to the satisfaction of the Trial Court concerned;
- (vi). 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;
- (vii). Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to Superintendent (Jails) concerned;

- (viii). Petitioner shall not jump over the parole and also shall not leave the country;
- (ix). Learned Trial Court or the State Authorities, including Superintendent Jail, Nahan, District Sirmour, is free to impose any other condition on the petitioner before or during parole period hereinafter;
- (x). 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 herein-after ;
- (xi). 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 to District Magistrate/Deputy Commissioner, Superintendent of Police Sirmour District, at Nahan (HP) and also to District Magistrate, Alwar

[Rajasthan] and Superintendent of Police, Alwar [Rajasthan], 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.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

April 11, 2025
[Shivender]