

[2023] 3 S.C.R. 666

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ANIL KUMAR

V.

STATE OF HARYANA & ORS.

(Writ Petition (Crl.) No. 46 of 2022)

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MARCH 24, 2023

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 – s.3(3) – Petitioner was released on emergency parole/

- C temporary parole pursuant to the decision of the High-Powered Committee constituted as per the orders issued by Supreme Court, due to the Covid-19 pandemic – Such parole period if shall be counted towards the total period of sentence of the petitioner – Held: No – In the State of Haryana, the temporary release on parole is governed by the statutory provisions of the 1988 Act – s.3(3) of
 - D the 1988 Act specifically provides that the period of temporary release shall not be counted towards the total period of the sentence of a prisoner – Thus, when the petitioner has been convicted for offences u/s.302/34, IPC and sentenced to undergo life imprisonment, he has to undergo the said sentence subject to any rule/policy in respect of remission and the period during which he is released on emergency/interim parole has to be excluded for the purpose of actual imprisonment – Petitioner not entitled to any relief prayed in the writ petition – Penal Code, 1860 – ss.302/34 – Constitution of India – Art. 32.

- F Rohan Dhungat Etc. v. The State of Goa & Ors. Etc.
Special Leave Petition (Crl) Nos. 12574-77/2022 :
2023 SCC OnLine SC 16; *State of Haryana & Ors. v. Mohinder Singh* (2000) 3 SCC 394 : [2000] 1 SCR 698 – relied on.

- G *Avtar Singh v. State of Haryana* (2002) 3 SCC 18 : [2002] 1 SCR 1082 – referred to

Case Law Reference

[2002] 1 SCR 1082	referred to	Para 3.3
[2000] 1 SCR 698	relied on	Para 3.3

CRIMINAL ORIGINAL JURISDICTION: Writ Petition A
(Criminal) No. 46 of 2022.

Under Article 32 of The Constitution of India.

Tushar Mehta, SG, Ms. Aishwarya Bhati, Balbir Singh, A.S.Gs.,
Ms. Garima Prasad, Sr. A.A.G, Ms. Bansuri Swaraj, A.A.G, Mrs. Ankita
Choudhary, D.A.G, S. C. Verma, Sr. Adv., Ms. Ritu Kumar, Satya Mitra,
Shreekant Neelappa Terdal, Dr. N. Visakamurthy, Ankur Talwar, Ms.
Swati Ghildiyal, Rajat Nair, Ms. Ana Upadhyay, Ms. Manya Hasija, Akash
Singh, Nihar Dharmadhikari, Ms. Sampriti Baksi, Dr. Monika Gusain,
Manish Kumar, Vijay Kumar, Rahul Dev Singh, Vinod Sharma,
M/s. Parekh & Co., Talha Abdul Rahman, Malak Manish Bhatt, Ms.
Uttara Babbar, Ms. Sneha Kalita, Gaurav Agrawal, Vivek Narayan
Sharma, Ms. Mahima Bhardwaj, Ms. Laksha Bhavnani, Shubham
Awasthi, Pranshu Kausha, Rajeev Kumar Jha, Ram Kumar, T.L.V.
Ramachari, Hitesh Kumar Sharma, Akhileshwar Jha, Ms. Niharika
Dwivedi, Amit Kumar Chawla, T.N. Rama Rao, Ashok Reddy, G. N.
Reddy, Ms. Jayshree Satpute, Prasanna S., Nirmal Kumar Ambastha,
Ms. Ashmita Bisarya, Dr. Joseph Aristotle S., Shobhit Dwivedi,
Ms. Nupur Sharma, Manendra Pal Gupta, Varun Varma, Dhanesh
Ieshdhan, V. N. Raghupathy, Pukhrambam Ramesh Kumar, Karun
Sharma, Ms. Anupama Ngangom, Ms. Taruna Ardhendumauli Prasad,
Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya A. Pande, Bharat
Bagla, Sourav Singh, M. Yogesh Kanna, Avijit Mani Tripathi, Upendra
Mishra, P.S. Negi, Krishnanand Pandeya, Nirnimesh Dube, Siddhesh
Kotwal, Nihar Dharmadhikari, Ms. Sampriti Baksi, Neeraj Shekhar,
Dr. Sumit Kumar, Ashutosh Thakur, Keshav Baheti, Chandra Pratap,
Raj Bahadur Yadav, Harmeet Singh Ruprah, Anupam Raina, Irshad
Ahmad, G. M. Kwoosa, Ms. Palak Mittal, Shailesh Madiyal, Ms. Simran
Sadyora, Mohd. Farhan Khan, Vinod Sharma, Ms. Astha Sharma, Srisaty
Mohanty, Sanjeev Kaushik, Ms. Mantika Haryani, Shreyas Awasthi,
Himanshu Chakravarty, Ms. Ripul Swati Kumari, Bhanu Mishra,
Ms. Muskan Surana, Ms. Supriya Juneja, Shibashish Misra, K. Rajeev,
Maibam Nabaghanashyam Singh, Shridhar Y Chitale, Pranay Chitale,
Ms. Mukti Chowdhary, Kanhaiya Singhal, Jasmeet S. Chadha, Prasanna,
P. S. Sudheer, Rishi Maheshwari, Anne Mathew, Bharat Sood, Ms. Shruti
Jose, Sandeep Singh, Subash Chandran, Sayooj Mohandas M,
Ms. Kavitha Kt, Rakesh Kumar Singh, Ashok Anand, Samantha Padhan,
Rajeev Ranjan, M/s. Venkat Palwai Law Associates, Ms. K. Enatoli

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- A Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Chang, Prang Newmai, Ms. Radhika Gautam, Mrs. Taruna Singh Gohil, Mahfooz Ahsan Nazki, Polanki Gowtham, Shaik Mohamad Haneef, T Vijaya Bhaskar Reddy, Ms. Rajeswari Mukherjee, Ms. Niti Richhariya, Kv Girish Chowdary, Milind Kumar, Tapesh Kumar Singh, Mahesh Thakur,
- B Maibam Nabaghanashyam Singh, Rishi Malhotra, M/s. Lambat & Legiteam, Kishore Lambat, Ms. Kashmira Lambat, Sachin Pahwa, Ms. Suja Joshi, Sumeer Sodhi, Devashish Tiwari, Santosh Kumar - I, M/s. Arputham Aruna and Co, Avneesh Arputham, Ms. Anuradha Arputham, Ankit Sharma, Gaurav Khanna, Gurmeet Singh Makker, Vinay Arora, Sanjai Kumar Pathak, Arvind Kumar Tripathi, Mrs. Shashi Pathak,
- C Amrish Kumar, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, M. Shoeb Alam, G. Prakash, Ms. Binu Tamta, Manish Kumar, Prashant Shrikant Kenjale, Nikhil Goel, Ms. Naveen Goel, Aditya Koshy Roy, Sibo Sankar Mishra, Sunil Mund, Niranjan Sahu, Debabrata Dash, Ms. Apoorva Sharma, Aravindh S., Ms. Uma Bhuvaneswari. C, Abbas.
- D B, Sameer Abhyankar, Ms. Nishi Sangtani, Ms. Vani Vandana Chhetri, Sachin Patil, Narendra Kumar, Raghvendra Kumar, Anand Kumar Dubey, Ms. Rajlakshmi Singh, Sunil Saraogi, Apoorv Kurup, Ms. Nidhi Mittal, Vishnu Shankar Jain, Ms. Ranjeeta Rohatgi, Shuvodeep Roy, Sai Shashank, Deepayan Dutta, S. Thananjayan, Ms. Mrinal Gopal Elker, Susheel Tomar, Sriharsha Peechara, Dhuvvuri Subrahmanyam Bhanu, Rajiv
- E Kumar Choudhary, Anoop Prakash Awasthi, Vivek Kumar Tiwari, Ms. Divya Dwivedi, Abhimanyu Tewari, Ms. Eliza Bar, Advs. for the appearing parties.

By Courts Motion

Applicant-in-person

F The Judgment of the Court was delivered by

M. R. SHAH, J.

- G 1. By way of this writ petition filed under Article 32 of the Constitution of India, the petitioner – convict in the State of Haryana has prayed for order or direction of quashing and setting aside the decision of the High-Powered Committee dated 09.05.2021 constituted as per this Court’s order dated 23.03.2020 passed in *Suo-Moto W.P. (C) No. 1/2020*, in so far as it states that the period of release on interim parole shall not be counted towards the total period of the sentence of the convict prisoner.
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2. Ms. Ritu Kumar, learned counsel appearing on behalf of the petitioner has vehemently submitted that the petitioner was released on emergency parole pursuant to the decision taken by the High-Powered Committee constituted as per the directions issued by this Court in SWM (C) No. 1/2020. It is submitted that this Court as such directed in the subsequent orders that those convicts who were released on emergency parole earlier pursuant to the decision of the High-Powered Committee shall not be asked to surrender until further orders. It is submitted that therefore, the petitioner was released pursuant to the decision of the High-Powered Committee and not on any application made by the petitioner and/or under Section 3(3) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the Act, 1988). It is submitted that therefore, subsequently in its meeting held on 09.05.2021, the High-Powered Committee could not have taken the decision that the period of release on interim/special parole shall not be counted towards the total period of the sentence of the prisoner/convict.

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2.1 It is submitted that so far as some of other States are concerned, the period of release on interim parole has been directed to be counted towards the total period of sentence of the convict/prisoner.

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2.2 It is further submitted by learned counsel appearing on behalf of the petitioner that if the petitioner would not have been released on interim parole and would have undergone the sentence in that case after certain period of sentence he would have been entitled to the remission. It is further submitted that as the petitioner was released on interim parole and if the said period is not counted towards the total period of sentence in that case his right to claim the remission would further be extended which may be detrimental to the interest of the petitioner.

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2.3 Making the above submissions, it is prayed to issue the writ for which it is prayed for.

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3. Present writ petition is vehemently opposed by Ms. Bansuri Swaraj, learned AAG appearing on behalf of the State.

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3.1 It is vehemently submitted by learned counsel appearing on behalf of the State that in the present case the petitioner – convict has been convicted for the offences under Sections 302/34 of IPC and sentenced to undergo life imprisonment. It is submitted that the conviction and sentence awarded by the learned Trial Court has been upheld up to

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- A this Court and the SLP has been dismissed. It is submitted that therefore, the petitioner has to undergo the life imprisonment in accordance with law and the sentence imposed by the learned Trial Court.
- 3.2 It is submitted that thereafter, the petitioner has been released on emergency parole/temporary parole pursuant to the decision of the
- B High-Powered Committee constituted as per the directions issued by this Court in SWM (C) No. 1/2020, due to the Covid-19 pandemic. It is submitted that while granting the temporary parole/emergency parole initially the High-Powered Committee in the minutes of the meeting held on 12.11.2020 specifically observed in paragraph 4 that no specific directions for not counting period of special parole towards sentence are required to be made in view of statutory provisions and authorities are directed to decide the said issue in accordance with statutory provisions. It is submitted that as per Section 3(3) of the Act, 1988, the period of temporary release/parole shall not be counted towards the total period of sentence of a prisoner. It is submitted that thereafter when the
- C emergency parole/temporary parole has been further extended pursuant to the subsequent directions issued by this Court, the High-Powered Committee has specifically provided as per note in the minutes of the meeting that the period of release on interim parole shall not be counted towards the total period of sentence of the convict – prisoner which as such in consonance with the statutory provisions. It is submitted that
- E therefore, the decision of the High-Powered Committee in its meeting held on 09.05.2021 on the period of release on interim parole shall not be counted towards the total period of the sentence of the prisoner/convict is neither illegal and nor contrary to the statutory provisions.
- 3.3 It is further submitted that the issue whether the period of
- F parole is to be counted towards the total period of the sentence of the convict – prisoner is now not *res-integra* in view of the recent decision of this Court in the case of **Rohan Dhungat Etc. Vs. The State of Goa & Ors. Etc. (Special Leave Petition (Crl) Nos. 12574-77/2022): (2023 SCC OnLine SC 16)**. It is submitted that after
- G considering the law on the point and taking into consideration the earlier decisions, this Court has specifically observed and held that period during which a convict is released on parole shall not be counted while considering the actual imprisonment. It is submitted that in the case of **Avtar Singh Vs. State of Haryana (2002) 3 SCC 18**, this Court considered the constitutional validity of Section 3(3) of the Act, 1988
- H and while holding the constitutional validity, it is observed by this Court

that by a valid legislative act the period of temporary release on parole can be denied while counting the actual sentence undergone by the convict – prisoner. It is submitted that subsequently in the case of **State of Haryana & Ors. Vs. Mohinder Singh (2000) 3 SCC 394**, this Court has specifically observed and held that the period of parole should not be counted towards the total period of sentence as when a prisoner is on parole his period of release does not count towards the total period of sentence.

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3.4 Making the above submissions, it is prayed to dismiss the present writ petition.

4. The short question which is posed for the consideration of this Court is whether a convict/prisoner who has been released on temporary parole/emergency parole, pursuant to the decision of the High-Powered Committee constituted as per the orders passed by this Court in SWM (C) No. 1/2020, such parole period shall be counted towards the total period of sentence of the convict – prisoner?

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4.1 At the outset, it is required to be noted that so far as the State of Haryana is concerned as such the temporary release on parole is governed by the statutory provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. Section 3(3) of the Act, 1988, which specifically provides that the period of temporary release shall not be counted towards the total period of the sentence of a prisoner. Thereafter, the High-Powered Committee constituted pursuant to the directions issued by this Court directed the convicts/prisoners to be released on temporary parole/emergency parole in the minutes of the meeting held on 12.11.2020 specifically observed that no specific directions for not counting period of special parole towards sentence are required to be made in view of the statutory provisions and the authorities are directed to decide the issue in accordance with statutory provisions. That thereafter, when the emergency parole has been further extended pursuant to the subsequent orders passed by this Court, the minutes/note of the meeting specifically provides that the period of release pursuant to the decision of the High-Powered Committee shall not be counted towards the total period of sentence of the prisoner/convict. As such the said note is absolutely in consonance with the statutory provision, namely, Section 3(3) of the Act, 1988.

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5. At this stage, it is required to be noted that vires of Section 3(3) of the Act, 1988 was challenged before this Court and by judgment and

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- A order passed in **Avtar Singh (supra)**, this Court has upheld the vires of Section 3(3) of the Act, 1988.
- 5.1 Subsequently, in the case of **Mohinder Singh (supra)**, this Court has specifically observed and held that the period of parole shall not be counted towards the total period of sentence. It is observed and
- B held that when a prisoner is on parole his period of release does not count towards the total period of sentence.
- 5.2 In the recent decision of this Court in the case of **Rohan Dhungat (supra)**, this Court had an occasion to consider the similar issue/question and after taking into consideration the object and purpose of parole, it is observed and held by this Court that period of release on parole shall not be counted for the purpose of considering the actual imprisonment and the said period of parole has to be excluded. In the case of **Rohan Dhungat (supra)**, this Court has observed in paragraph 10 as under: -
- D “10. If the submission on behalf of the prisoners that the period of parole is to be included while considering 14 years of actual imprisonment is accepted, in that case, any prisoner who may be influential may get the parole for number of times as there is no restrictions and it can be granted number of times and if the submission on behalf of the prisoners is accepted, it may defeat the very object and purpose of actual imprisonment.
- E We are of the firm view that for the purpose of considering actual imprisonment, the period of parole is to be excluded. We are in complete agreement with the view taken by the High Court holding so.”
- F 6. In view of the above and when the petitioner has been convicted for the offences under Sections 302/34 of IPC and sentenced to undergo life imprisonment, he has to undergo the said sentence actually subject to any rule/policy in respect of remission and the period during which he is released on emergency/interim parole has to be excluded for the purpose of actual imprisonment. Under the circumstances, the petitioner
- G is not entitled to claim any relief prayed in the instant writ petition. Under the circumstances, the present petition lacks merits and the same deserves to be dismissed and is accordingly dismissed.