




HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

D.B. Criminal Parole Writ Petition No. 1454/2023

Asha Ram @ Ashumal S/o Late Shri Thevardas @ Thaumal, Aged About 84 Years, At Present Lodged In Central Jail, Jodhpur Through His Nephew Ramesh Bhai S/o Shri Lal Chand Pagarani, Aged About Years, R/o C-1, Sahyog Park, Nandigram, Nobel Nagar, P.s. dar Nagar, District Ahmedabad (Gujrat)

----Petitioner

Versus

1. State Of Rajasthan, Department Of Home, Jaipur.
2. The District Collector, Jodhpur.
3. The Superintendent, Central Jail, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Vikas Balia, Senior Advocate assisted by Mr. Kaluram Bhati Advocate, Mr. Naresh Charnia Advocate, Mr. Lalit Kishore Sen Advocate & Mr. Yashpal Singh Advocate.
For Respondent(s)	:	Mr. Anil Joshi, GA-cum-AAG with Mr. Rajat Chhapparwal Advocate & Mr. Pallav Sharma Advocate.

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

25/01/2024

By the Court: (Per Manindra Mohan Shrivastava, ACJ)

1. By this petition under Article 226 of the Constitution of India, the petitioner assails correctness and validity of order dated 22.08.2023 by which his application for grant of first parole of 20 days has been rejected by the District Parole Advisory Committee, Jodhpur (hereinafter referred to as 'the DPAC').
2. The petitioner was convicted for offence under Sections 370 (4), 342, 506, 120B, 354A, 376(D), 376(2)(F), 509 of Indian Penal Code,



1860 (hereinafter referred to as 'IPC'), Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act of 2000') and Section 5(g)/6,7/8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act of 2012') and sentenced with life imprisonment for remainder of natural life vide judgment of conviction and order of sentence dated 25.04.2018 passed by the learned Special Judge, POCSO Act Cases, Jodhpur in Session Case No.116/2016. The petitioner has filed an appeal which has been registered as D.B. Criminal Appeal No.123/2018 against judgment of conviction and order of sentence, which is pending.

3. The petitioner was also convicted for commission of offence under Sections 376(2)(c), 377, 354, 342, 357, 506(2) IPC and sentenced with life imprisonment in case No.34/2014 (218/2013) vide judgment of conviction and order of sentence dated 31.01.2023 passed by learned Additional Session Judge No.03 Gandhi Nagar Gujarat. In view of the provisions contained in Section 427(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr. P.C. '), the learned Trial Court also ordered that the sentence awarded to the petitioner shall run concurrently along with the sentence of life imprisonment awarded in Sessions Case No.116/2016 (152/2013) passed by the learned Special Judge, POCSO Act Cases, Jodhpur.

4. The petitioner applied for grant of first parole of 20 days before the District Collector, Jodhpur. His application was placed before the DPAC in its meeting dated 20.06.2023. The application was, however, rejected on the ground that the petitioner was not entitled to avail first parole of 20 days as per the provisions contained in the Rajasthan Prisoners Release on Parole Rules, 2021 (hereinafter



referred to as 'the new parole Rules of 2021'). The order of rejection was challenged by filing a petition being D.B. Criminal Writ Petition No.613/2023. Vide order dated 10.07.2023, the decision taken by the DPAC in its meeting dated 20.06.2023, was set aside and the authorities were directed to consider the application filed by the petitioner for releasing him on first parole of 20 days afresh in accordance with the provisions contained in the Rajasthan Prisoners Release on Parole Rules, 1958 (hereinafter referred to as 'the old Parole Rules of 1958'), instead of the provisions contained in the new Parole Rules of 2021, within a period of six weeks from the date of receipt of certified copy of this order.

5. Thereafter, case of the petitioner was again considered by the DPAC in its meeting dated 21.08.2023. The petitioner's application for grant of parole was, however, again rejected. Aggrieved by the second rejection, this petition has been filed.

6. Learned Senior counsel for the petitioner would submit that even though once this Court directed respondents to examine and consider the petitioner's application for grant of parole under the old Parole Rules of 1958, the respondent authority DPAC was obliged under the law to decide the application under the old Parole Rules of 1958, but in complete defiance of the order passed by this Court, vide impugned order dated 22.08.2023, application has been rejected on untenable ground. The submission of learned Senior counsel for the petitioner is that perforce Section 427 (2) Cr. P.C., life sentence awarded in Gujarat case shall run concurrently with the sentence of life imprisonment awarded in Jodhpur case by operation of law without there being any order of the Court. The petitioner has undergone more than half of the sentence awarded in both Jodhpur



and Gujarat case. It is further submitted that though the petitioner is not required to pay fine until his appeal against conviction is pending and non-payment of fine could not be used as a pretext to deny parole, in any case, the petitioner has deposited the entire amount of

Therefore, for the purposes of computing half of the sentence awarded to the petitioner, the period of default sentence cannot be added. Further submission is that once this Court vide order dated 10.07.2023 passed in D.B. Criminal Writ Petition No.613/2023, directed consideration of petitioner's application for grant of parole under the old Parole Rules of 1958, the impugned order to reject application on the ground that applicant is not entitled to grant of parole in connection with the sentence awarded in order of conviction in Gujarat Case by applying the provisions of the new Parole Rules of 2021, is patently illegal. The application of the petitioner was liable to be considered only under the old Parole Rules of 1958. Further contention is that even if it is held that the provisions contained in Rule 1(3) of the new Parole Rules of 2021 would not be applicable to class of prisoners, who were convicted in another State, the old Parole Rules of 1958 would be applicable. As the petitioner has already undergone one fourth of the sentence including remission, the rigour of Rule 14(a) is set-off. In any case, it is strongly contended, whether consideration is made under the old Parole Rules of 1958 or the new Parole Rules of 2021, the petitioner has completed the required part of the sentence for grant of parole and bar to grant parole to a prisoner under the old Parole Rules of 1958 or the new Parole Rules of 2021 is not attracted, rejection of application is bad in law. As per the Jail Superintendent, the conduct of the petitioner in jail is satisfactory. He has not committed any





offence & Welfare Officer has also recommended the case of the petitioner for grant of parole. Parole is a temporary release and does not change the status of the prisoner. The authorities failed to appreciate that it is an act of grace granted for a temporary period therefore, there is no impediment under the law to grant of first parole of 20 days, which is only a short period. The decision to reject application is without due application of mind and more in a mechanical manner on non-existent ground and on mere apprehension without any material that release of the petitioner will create law & order issues. The petitioner, being an old man aged 85 years, is facing critical life-threatening medical condition. Therefore, petitioner's application for grant of first parole of 20 days ought to be allowed. In support of his submissions, learned senior counsel for the petitioner has relied upon several judgments. ¹

7. *Per-contra*, learned counsel for the State, opposing the prayer for grant of parole, would submit that the decision taken by the DPAC does not warrant any interference as the committee has decided the application in due compliance of the order dated 10.07.2023 passed in D.B. Criminal Writ Petition No.613/2023. The petitioner has been held guilty of commission of offence and convicted in two separate criminal trials.

Uptill 15.09.2023, the petitioner had undergone 11 years 2 months & 1 day of jail sentence under judgment of conviction and

1 (1) Om Prakash Versus State of Rajasthan, Cr. L.R. (Raj.) 2002(1)
 (2) Mohan Lal Versus State of Rajasthan, 2002 (2) WLN 615
 (3) Pappu Khan Versus The State of Rajasthan & Others, 2006 (1) WLC 31
 (4) Budhi Versus State of Rajasthan & Another, 2006 Criminal Law Journal 357
 (5) Asfaq Versus State of Rajasthan & Others, (2017) 15 Supreme Court Cases 55
 (6) Ranjit Singh Versus Union Territory of Chandigarh and Another, (1991) 4 SCC 304
 (7) State of Haryana and Others versus Jagdish, (2010) 4 SCC 216
 (8) Rajo Versus The State of Bihar and Others, AIR 2023 SC 4084 &
 (9) Aakib Ali Khan Versus State of Rajasthan, D.B.Civil Writ Petition No.11624/2015, decided on 07.10.2015.





order of sentence dated 25.04.2018 in Jodhpur case and 10 years jail sentence in connection with his conviction vide judgment of conviction and order of sentence dated 31.01.2023 passed in Gujarat case. He would submit that in view of provisions contained in Section of the new Parole Rules of 2021, those rules are not applicable persons who have been convicted by a Court of other State.

The petitioner's case for grant of parole was considered under the old Parole Rules of 1958 in connection with jail sentence awarded in Jodhpur case as conviction was ordered prior to coming into force of the new Parole Rules of 2021. However, petitioner's case for grant of parole in connection with the jail sentence awarded under judgment of conviction and order of sentence in Gujarat Case was examined under the new Parole Rules of 2021.

As per Rule 16(1) (c) of the new Parole Rules of 2021, the petitioner shall not be eligible for release on parole unless he has not served half of the sentence including remission in cases where conviction is for offences punishable with imprisonment of 7 years or more under any other law. As per Rule 17(d) of the new Parole Rules of 2021, life sentence is to be reckoned as 20 years and, therefore, in view of explanation appended to the aforesaid provision, the expression "Sentence of imprisonment" in these rules shall include imprisonment in default of payment of fine and imprisonment for failure to furnish security under Chapter VIII of the Cr. P.C.. As the petitioner has served sentence of 10 years, 8 months and 4 days including remission till 05.05.2023, he would be entitled to apply for grant of parole only after having undergone jail sentence of 11 years, 7 months including sentence in default of fine. Therefore, irrespective of all other considerations with regard to suitability for grant of



parole, petitioner being not eligible to apply for parole, at this stage, his application has been rightly rejected. In any case, assuming the application of the petitioner to be maintainable under the new Parole Rules of 2021, Commissioner of Police, Jodhpur and the Social Welfare Officer, District Jodhpur forwarded their opinion to the District Magistrate, Jodhpur, which were taken into consideration by the DPAC. The DPAC held its meeting on 21.08.2023.

Learned State counsel referring to order dated 06.09.2023 passed in S.B. Criminal Writ Petition No.159/2021 titled as (Narayan Sai and Another Versus State of Rajasthan and Others) would submit that the directions have been issued for providing proper treatment including Ayurvedic treatment, as desired. He would submit that even while the petitioner is undergoing jail sentence, he will be provided all necessary medical facilities as are provided to other inmates of jail.

8. During the course of hearing, learned counsel for the State produced before us the original file relating to consideration of the case of petitioner, which was directed to be kept on record in sealed cover.

9. We have heard learned Senior counsel for the petitioner as well as learned State counsel and perused the material on record of the case.

10. As is revealed from the record of the case, while the petitioner was undergoing jail sentence in execution of judgment of conviction and order of sentence dated 25.04.2018 in Session Case No.116/2016 passed by the learned Special Judge, POCSO Act Cases, Jodhpur in the State of Rajasthan, he was again convicted vide judgment of conviction and order of sentence dated 31.01.2023 in Case No.34/2014 (218/2013) passed by the learned Additional



Session Judge No.03 Gandhi Nnagar Gujarat. In view of the provisions contained in Section 427(2) of the Cr. P.C., both the sentences have to run concurrently. The petitioner, who is undergoing jail sentence in Central Jail, Jodhpur, sought to avail first parole of 20 days; which prayer was, however, rejected by the DPAC in its meeting held on 20.06.2023. The petitioner's application for release on parole was considered under the New Parole Rules of 2021. The DPAC opined that unless petitioner undergoes half of the jail sentence, he is not entitled to avail benefit of parole. Referring to the provisions contained in Rule 16(1) (C) & 17(D) of the new Parole Rules of 2021 and the explanation appended to it, it was stated that as the period of default sentence is also required to be added to the period of sentence awarded under the order of conviction, unless petitioner undergoes half of the jail sentence, i.e., 11 years and 7 months, he is not entitled to be released on parole.

The other reason assigned for rejecting the application was that as per the provisions contained in Rule 1(3) of the new Parole Rules of 2021, the petitioner having been convicted by a Court of other States, rules have no application and, therefore, the petitioner is not eligible to claim parole under the new Parole Rules of 2021.

11. It would, thus, be seen that DPAC though resolved that the new Parole Rules of 2021 are not applicable to the petitioner, otherwise also examined his entitlement under those rules.

12. The aforesaid order came to be challenged before this Court by filing Writ Petition registered as D.B. Criminal Writ Petition No.613/2023, which was allowed vide order dated 10.07.2023. A perusal of the aforesaid order would show that the main contention raised before the Court was that the petitioner was convicted and



sentenced by the Trial Court on 25.04.2018, whereas, the new Parole Rules of 2021 came into effect from 30.06.2021 and, as such, the application filed by the petitioner for releasing him on first parole of 70 days was liable to be considered under the provisions of the old Parole Rules of 1958 and not the provisions of the new Parole Rules of 2021.

Relying upon the decision in the case of **Hitesh @ Bavko**

Shivshankar Dave Versus State of Gujrat in Writ Petition (Criminal) No.467/2022, decided on 24.01.2023 by the Hon'ble Supreme Court and the decision of this Court in the case of **Anil Kumar @ Kaley Versus State of Rajasthan & Others in D.B. Criminal Writ Petition (Parole) No.381/2022**, decided on 02.02.2023, it was held that the application of the petitioner was required to be considered under the old Parole Rules of 1958. The entire argument was based only on the submission that conviction having taken place prior to promulgation of the new Parole Rules of 2021, old Parole Rules of 1958 will apply. It was neither argued, nor any issue arose for consideration before this Court with regard to entitlement of the petitioner for release on parole while undergoing jail sentence in connection with the judgment of conviction and order of sentence dated 31.01.2023 passed by the learned Additional Session Judge No.03, Gandhi Nagar Gujarat. The decision of the DPAC based on consideration of prayer for grant of parole by applying the new Parole Rules of 2021, was, therefore, held illegal. The petitioner's case was directed to be considered for grant of parole under the old Parole Rules of 1958.

13. When the petitioner's case for grant of parole was again considered after the order of the Court, in the meeting of DPAC held



on 21.08.2023, the petitioner's application for grant of parole was considered separately in connection with the conviction vide judgment of conviction and order of sentence dated 25.04.2018 passed by the Special Court, POCSO Act cases at Jodhpur and his application for grant of parole in connection with the judgment of conviction and order of sentence dated 31.01.2023 passed by the Additional Session Judge No.3, Gandhi Nagar, Gujarat.

In both the cases, the petitioner has been convicted for several offences and the maximum sentence awarded to him is life imprisonment.

14. As far as consideration of the petitioner's case for grant of parole in connection with the judgment of conviction and order of sentence dated 25.04.2018 is concerned, the DPAC was of the opinion that two separate applications for grant of first parole of 20 days at different places have been made and nothing has been disclosed in those applications to *prima-facie* show that the petitioner needs first parole of 20 days to discharge his social obligation towards his family and children. It has been stated that the parole was sought as a measure of re-integration in the society and also for his own treatment. It was also considered that the Deputy Commissioner of Police, Jaipur (East) and Deputy Commissioner of Police, Jodhpur (West) have made adverse comments that if the petitioner is released on parole, it will adversely affect law & order situation.

15. It is, thus, clear that insofar as prayer for grant of first parole of 20 days in connection with judgment of conviction and order of sentence dated 25.04.2018 is concerned, the petitioner was though found eligible, his application was rejected for the reason that firstly





different reasons were stated for release on parole in two different applications and secondly that in the event of grant of parole, it will affect law & order situation.

16 Explaining the meaning and purpose of grant of parole, Hon'ble Supreme Court in the case of **Asfaq Versus State of Rajasthan & Others (Supra)**, observed as below:-

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.....

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 (*sic* short) 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

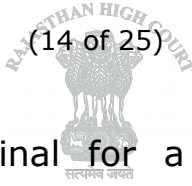


release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed 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.”

17. A Division Bench of this Court in the case of **Pappu Khan Versus State of Rajasthan (Supra)**, on facts, held that when both Social Welfare Officer as well as Superintendent of Central Jail have recommended release of prisoner on parole, the Advisory Committee should not *ipse dixit* accept the report submitted by the Police.

18. In another decision in the case of **Budhi Versus State of Rajasthan & Another (Supra)**, it was held that the police report cannot just state conclusion in its report and rather it has to mention the evidence based on which it has come to any conclusion, in the absence of which, it is to be assumed to be mechanical. It was also held that the Advisory Board is not to mechanically accept the adverse police report and to deny the parole on such a report.

19. The reasons which have been assigned to reject the application for grant of parole in connection with judgment of conviction and order of sentence dated 25.04.2018 is firstly premised on considerations that two different applications stating different reasons have been assigned seeking release on parole.

The DPAC noted that not only the reasons assigned for seeking parole are different, but also parole has been sought for different places and the Districts. However, the DPAC found that the petitioner



sought parole towards re-integration in the society and his own treatment

The other reason assigned is that there are reports of Deputy Commissioner of Police, Jaipur (East) and Deputy Commissioner of Police, Jodhpur (West) that in the event of grant of first parole of 20 days, it may affect adversely law & order situation. In report dated 07.07.2023 of the Deputy Commissioner, Jaipur (East), it has been mentioned that the petitioner has been convicted for commission of heinous offence of rape and also convicted under POCSO Act. In the event of release, there is likelihood of hurting sentiments of the society. On the basis of report submitted by the Station House Officer (SHO) of Kho Nagoriyan, it has been reported that there is likelihood of agitation by the victim side, which may adversely affect law & order situation.

20. In report dated 01.08.2023 of the Deputy Commissioner, Jodhpur (West), it has been stated that in the event of grant of parole, law & order situation may be adversely affected as there are large number of disciples of the petitioner not only in the State of Rajasthan, but also all over the country, who may come to meet the petitioner in which event law & order situation may be adversely affected. It has also been stated that at the address given by the petitioner, no member of his family is residing there, nor it is the permanent residence address of the petitioner, therefore, parole may not be accepted on such address. It has also been stated that in the event of release of the petitioner on parole, life and liberty of the family of victim may be in danger. On the health issue, it has been stated that the petitioner is being provided treatment while undergoing jail sentence and the reason assigned that he needs



parole for his treatment, does not appear to be correct. The report also states that on the basis of information received, in the event of release on parole, the petitioner is likely to abscond.

21 It would, thus, be seen that two reports, constituting adverse material for grant of release on parole, have been given by very poor and responsible police officers and cannot be said to be based on *ipse dixit*.

22. The probation and Jail Welfare Officer in his report dated 01.08.2023 has also stated that though the conduct and behavior of the petitioner while undergoing jail sentence is satisfactory, however, if he is released on parole, there is all likelihood of huge gathering of his disciples both at Jodhpur and the Ashram at Palgaon. In the opinion, it has been stated that the petitioner may be granted parole on appropriate condition as he has undergone 10 years of jail sentence and his conduct and behavior, as convict, is satisfactory.

23. Superintendent of Central Jail, Jodhpur in his report has stated that the petitioner has earned the eligibility to be released on parole. It has also been stated that his conduct while undergoing jail sentence is satisfactory.

Vide memo dated 26.07.2023, Additional Collector and Additional District Magistrate, Jaipur taking into consideration the reports of Additional Commissioner of Police (Crime), Jaipur and that of Deputy Director, Social Justice and Empowerment Department, Jaipur communicated to the Superintendent of Central Jail, Jodhpur opined that release of the petitioner on parole is not recommended.

24. Provisions contained in Rule 5 of the old Parole Rules of 1958 make it clear that merely because a prisoner/inmate has become





eligible, he may not be released on parole. Provisions contained in Rule 5 of the old Parole Rules of 1958 reads as under:-

"5. District Magistrate may reject the application of forward the same to the [Appropriate Committee].- (a) After consulting the Probation Officer where appointed and if felt necessary the Superintendent of Police of the District or the District Magistrate concerned will give his remarks, whether the convict in question should be released on parole or not. In case the District Magistrate raises no objection to let off the prisoner on parole, he would sent all the papers in original to the [State Committee or District Committee on the case may be] for orders stating the conditions on which the prisoner may be released on parole. In case the District Magistrate dis-approves of the release, the application will be sent to the Superintendent Jail concerned stating the reasons of dis-approval.

(b) When the [State Committee of District Committee] receives the recommendation of the District Magistrate, it may consult the presiding judge of the court before or by which the conviction was had or confirmed under [section 432] of the Act, and may accept or reject the application.

[(c) If a prisoner is not eligible for parole under the rules and the Committee keeping in view the condition and circumstances of the prisoner, thinks it proper to release the prisoner on parole on humanitarian grounds, it may recommend the case to the Government. The Government may grant parole to such prisoner as a special case in relaxation of rules. Decision taken in such cases by the Government shall be final.]

25. Thus, it lies within the jurisdiction and consideration of the DPAC to grant or to reject parole.





26. The material which was placed before the DPAC cannot be said to be irrelevant or mere *ipse dixit*. Adverse police report given by senior police officials coupled with other considerations, which also include different grounds stated for release on parole on two different occasions leads to the conclusion that the reason assigned for rejecting application for grant of parole is neither irrelevant, nor alien to the decision making process.

27. It, therefore, cannot be said that the decision of the DPAC acted in contravention of substantive or procedural provisions contained in the old Parole Rules of 1958, nor can be the decision said to be so arbitrary or outrageous so as to call for judicial interference.

28. Insofar as consideration of the petitioner's application for grant of first parole of 20 days in connection with judgment of conviction and order of sentence dated 31.01.2023 passed by the Additional Sessions Judge No.03 Gandhi Nagar, Gujarat is concerned, we find that the DPAC resolved that the petitioner's application for grant of first parole of 20 days under the new Parole Rules of 2021 is not acceptable. While the application for grant of first parole of 20 days in connection with judgment of conviction and order of sentence dated 31.01.2023 has been rejected on the ground that the application cannot be accepted, the reasons behind such decision have been explained in the reply of the respondents. According to the respondents, the petitioner has not undergone half of the sentence of imprisonment awarded to him under the judgment of conviction and order of sentence. In support of this argument, provisions contained in Rule 16(1)(c) of the new Parole Rules of 2021 have been relied upon. Vide judgment of conviction and order of sentence dated 31.01.2023, the petitioner has been convicted for commission of





offences under Sections 376(2)(c), 377, 354, 342, 357 & 506(2) IPC. According to Rule 17(d) of the new Parole Rules of 2021, life sentence is to be reckoned as 20 years.

Explanation attached with the rule and the expression "sentence of imprisonment" includes the imprisonment in default of payment of fine and imprisonment for failure to furnish security under Chapter VIII of the Cr. P.C.. On that basis, it has been stated in the reply that as the petitioner has served the jail sentence of only 10 years, 8 months and 4 days including remission till 05.05.2023, he is entitled for grant of first parole of 20 days when he serves out sentence of 11 years and 7 months.

In our view, that may not be a basis for rejection of application for grant of first parole of 20 days under the new Parole Rules of 2021 inasmuch as the fine amount has already been deposited by the petitioner. Therefore, under any circumstances, the period of default sentence is not required to be served by the petitioner.

29. We, however, find that the Rule 1(3) of the new Parole Rules of 2021 does not apply in the case of the petitioner. The aforesaid rule being relevant, is extracted herein below:-

"They shall not apply to persons who have been convicted by a Court Martial or a court of other State."

30. On plain reading, it is clear that the new Parole Rules of 2021 do not apply to those persons, who have been convicted by a Court of other State. Therefore, in any case, the petitioner's application for grant of first parole of 20 days under the new Parole Rules of 2021 in connection with judgment of conviction and order of sentence dated 31.01.2023 passed by the Additional Session Judge No.03 Gandhi



Nagar Gujarat is not maintainable on the face of the provisions of law.

31. Learned Senior counsel for the petitioner extensively argued on the aspect that the aforesaid provision is required to be read down in view of the decisions of this Court in the cases of **Om Prakash Versus State of Rajasthan (Supra)** and **Aakib Ali Khan Versus State of Rajasthan (Supra)**.

As far as decision in **Om Prakash Versus State of Rajasthan (Supra)** is concerned, on facts, that was a case where the convict, who sought benefit of release on parole, was convicted by the Sessions Judge, Jalore (Rajasthan) for commission of offence under Section 302 IPC and was undergoing jail sentence in the Central Jail, Bikaner. He, however, was resident of a village in the State of Haryana. The application was rejected on the basis that the power of release on parole is with the Director General of Prison under the Haryana Release on Parole Rules.

The submission made on behalf of the State before the Court was that in view of Rule 14(a) of the old Parole Rules of 1958, the prisoner could not be released on parole as he is resident of a place outside the State of Rajasthan though confined in jail in the State of Rajasthan. Thus, the argument of ineligibility to be released on the ground of residence in another State was raised on the basis of the provisions contained in Rule 14(a) of the old Parole Rules of 1958. Rule 14(a) of the old Parole Rule of 1958 provided that a person whose ordinary place of residence is outside the State of Rajasthan will ordinarily not be eligible for release on parole. The consideration of the Court was confined only to this aspect as to whether a prisoner who is ordinarily not resident of the State of Rajasthan is entitled to



benefit of parole while undergoing jail sentence in a jail situated in the State of Rajasthan. The aforesaid Rule 14(a) of the old Parole Rules of 1958 to that extent was struck down. In Para-8 of the aforesaid decision, it was held as below:-

“8. The right to parole comes from humanitarian jurisprudence which is much above the Human Rights. Thus, in our view R.14 sub-rule (a) which prohibits release of a prisoner who is resident of outside the State of Rajasthan in comparison to local prisoners on parole makes a discrimination on the geographical ground and as such it is *per se* discriminatory. Thus, the R.14 sub-rule (a) only to the extent “Persons whose ordinary place of residence is outside the State of Rajasthan” is *ultra vires* of the Arts.14 & 21 of the Constitution of India. The authorities while considering the case of prisoner whose ordinary place of residence is outside the State of Rajasthan can enquire into the conduct of the convict more intensively but with the sense of urgency and within the stipulated period. Reasonable conditions can be imposed for the return of the convict to jail to serve out the remaining part of the sentence.”

It is, thus, clear that the consideration of the Court was confined only to the aspect of residence and nothing more.

32. In the case of **Aakib Ali Khan Versus State of Rajasthan (Supra)**, the basis for rejection was that in view of the provisions contained in Rule 14(a)(d) of the old Parole Rules of 1958, the prisoner “Ordinarily” is not eligible for release on parole unless he has undergone 1/4th of the jail sentence including remission and the Superintendent of Jail recommends the case in consultation with the District Magistrate with special reasons therefor.

A Division Bench of this Court, relying upon earlier decisions opined that the word “Ordinarily” does not mean “Necessarily”. It was





held that the language provided in the old Parole Rules of 1958 is not mandatory and it is still in the discretion of the concerned authorities to grant parole even though the case of convict may be covered in any of the sub-clauses mentioned in the rules.

While considering the case, the Court also noted that the DPAC assigned additional reason for rejecting the prayer for grant of parole that he was convicted by a Court situated in another State. On

this aspect, it was observed that once the accused has been detained in jail in the State of Rajasthan, he, for the purpose of release on parole, has to be subjected to the rules applicable to the prisoners in the State of Rajasthan, particularly when he happens to be a permanent resident of the State of Rajasthan. It is pertinent to note that the validity of the Rules was not under challenge in the case of **Aakib Ali Khan Versus State of Rajasthan (Supra)**.

It is also relevant to mention here that under the Rule 14(a) of the old Parole Rules of 1958, it was provided that the persons whose ordinary place of residence is outside the State of Rajasthan or who have been convicted by a Court of another State will ordinarily not be eligible for release on parole. As the old Parole Rules of 1958 incorporated the word "Ordinarily", taking into consideration the peculiar facts of that case that the petitioner therein was resident of the State of Rajasthan, the application for grant of first parole of 20 days was held to be maintainable.

33. Insofar as the new Parole Rules of 2021 are concerned, there is marked departure from the scheme of the old Parole Rules of 1958. While in Rule 14(a) of the old Parole Rules of 1958, the word "Ordinarily" has been incorporated leaving it to the discretion of the authorities for grant of first parole of 20 days even to those who have



been convicted by a Court outside the State of Rajasthan, the word "Ordinarily" is conspicuously absent in the new Parole Rules of 2021. The rule is clear and unequivocal that it will not apply to persons, who have been convicted by a Court of other State.

Irrespective of whether such provisions is unconstitutional or the law as it stands today, bars consideration of an application of isoner, who is undergoing jail sentence in a jail of Rajasthan, having convicted by a Court of other State. Thus, there is clear prohibition under the law. Therefore, the prayer to read down Rule 1(3) of the new Parole Rules of 2021, on the basis of the judgments rendered by this Court in the cases of Om **Prakash Versus State of Rajasthan (Supra)** and **Aakib Ali Khan Versus State of Rajasthan (Supra)**, cannot be accepted.

It is immaterial whether or not the petitioner has completed the minimum period of jail sentence so as to become eligible for release on parole under the new Parole Rules of 2021 in connection with judgment of conviction and order of sentence dated 31.01.2023 passed by the Additional Session Judge No.03 Gandhi Nagar, Gujarat. Neither the petitioner could seek his consideration for release on parole under the new Parole Rules of 2021, nor any direction can be issued by this Court for grant of first parole of 20 days under the new Parole Rules of 2021 as there is prohibition under the law. This Court would not issue mandamus directing consideration and release contrary to the provisions of the law.

35. In the absence of there being any challenge to the constitutionality and validity of Rule 1(3) of the new Parole Rules of 2021, we are not inclined to examine the vires of the aforesaid provisions.



36. The other submission of learned Senior counsel for the petitioner that in case of doubt, the beneficent rule will apply insofar as case for grant of first parole of 20 days is to be considered, pales into insignificance as we have examined the correctness of the decision to reject the application for grant of first parole of 20 days under the old Parole Rules of 1958 in connection with judgment of this Court in *Home Secretary (Prison) and Others Versus H. Nilofer Nisha*² and order of sentence dated 25.04.2018 passed by the Special Judge POCSO Act cases, Jodhpur.

37. In the case of **Home Secretary (Prison) and Others Versus H. Nilofer Nisha**², their Lordships in the Supreme Court authoritatively declared the legal position is below:-

“26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules.....”

38. The correctness and validity of the decision of the DPAC has been examined with reference to material which was made a basis for rejection of the application. This order would not affect the right of the petitioner to apply for grant of first parole of 20 days in future, in change circumstances.

We have also noted the submission of learned Senior counsel for the petitioner regarding the age and illness of the petitioner. Needless to say, the jail authorities are duty bound under the law to

² Home Secretary (Prison) and Others Versus H. Nilofer Nisha (2020) 14 Supreme Court Cases 161



provide necessary medical facilities and treatment to the petitioner and application in this regard made to the jail authorities, shall be considered favorably to facilitate proper treatment.

३१ In view of the above consideration, no relief can be granted and petition is, therefore, dismissed.

DR. PRAKASH SONI), J

(MANINDRA MOHAN SHRIVASTAVA), ACTING CJ

Sarjay Kumawat-104

