

Before : A. P. Chowdhri, J.

ASHOK KUMAR SON OF SHRI VED PAL,—Petitioner.

versus

THE CHANDIGARH ADMINISTRATION THROUGH ITS
SUPERINTENDENT JAIL CHANDIGARH AND
ANOTHER,—Respondents.

Criminal Writ Petition No. 3315 of 1989.

6th October, 1989

Constitution of India, 1950 Ss. 226, 227—Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 Ss. 3(1), 12(6)—Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (Act 11 of 1962) S. 2(d)—Petition on behalf of COFEPOSA detenu for release on Parole—Petitioner not approaching Central Government—Application for release on Parole—Whether can be entertained.

Held, that the word 'prisoner' is defined in clause (d) of section 2 of the said Act, to mean a person confined in a prison under a sentence of imprisonment. The detenu is not a prisoner in that he is not undergoing a sentence of imprisonment. He has been detained under section 3(1) of the COFEPOSA Act. No other statute referred under which the petitioner can claim parole. Prayer for bail is expressly barred under sub-section (6) of section 12 of the COFEPOSA Act. Sub-section (6) of Section 12 of COFEPOSA as amended by Amending Act, 1975 is also not attracted.

(Para 3)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble High Court may be pleased to issue:—

- (i) *a writ in the nature of habeas corpus or mandamus to the respondents holding that the petitioner have been deprived the benefit of emergency parole illegally and arbitrarily for which he is legally entitled under section 12 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.*
- (ii) *Affidavit of the petitioner may please to dispensed with.*
- (iii) *Certified copy of the Annexure P/1 may please be dispensed with.*
- (iv) *Advance notices to the respondents may please be dispensed with.*

Ashok Kumar son of Shri Ved Pal v. The Chandigarh Administration
through its Superintendent Jail Chandigarh and another
(A. P. Chowdhri, J.)

IT IS FURTHER PRAYED THAT :

Petitioner may please be granted Ad-Interim Bail during the pendency of the present criminal writ petition.

Rashpal Singh, Advocate, for the petitioner.

Anand Swarup, Sr. Advocate with Sunidh Kashyap, Advocate, for Respondent No. 1.

H. S. Brar, Advocate and P. S. Teji, Advocate, for Respondent No. 2.

JUDGMENT

A. P. Chowdhri, J.

(1) Brief facts which are necessary for the disposal of this writ petition under Article 226 of the Constitution are that the petitioner is a detenu in pursuance of an order dated March 11, 1988, passed under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA Act'). He was shifted from Delhi to Chandigarh Jail under orders of the Delhi High Court. The petitioner applied for four weeks' parole to attend on his 7-year old son Ashish, who had been advised, an operation and there was no other adult male member of the family who could look after the said child. The petitioner failed to elicit any reply from the authorities. He, therefore, filed the present petition challenging the aforesaid action of the authorities as arbitrary and contrary to law and praying for his temporary release on parole for the said purpose.

(2) In paragraph 5 of the petition, it was stated that no similar writ petition had been filed earlier either in this Court or in the Supreme Court. It was stated in paragraphs 3 and 5 of the return that Crl. Writ No. 1428 of 1989 had been filed in this Court on May 20, 1989, by the petitioner's wife Smt. Aruna Anand, seeking three weeks parole for the petitioner. The ground mentioned was that the petitioner's son was seriously ill and was under treatment of P.G.I. Chandigarh. A reply was filed in that writ petition by Shri Kuldip Singh, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, and it was stated therein, on the basis of a letter written by Shri A. J. Pinto, Principal, St. John

High School, Sector 26, Chandigarh, on July 6, 1989, that the petitioner's son Ashish Anand had attended the school on all working days in the months of April and May 1989. On the aforesaid reply having been filed, the petitioner withdrew the said writ petition on July 26, 1989, with permission to file a fresh petition. It was, therefore, pointed out that the assertion made in para 5 that no similar petition had been filed earlier in this Court was a misstatement and it is contended that the petition deserves to be dismissed on this short ground. The other material averments have been traversed in the return. After hearing the learned counsel for both the parties, I am of the considered view that the petition must fail.

(3) The relief sought in the petition is one of parole. The word 'parole' occurs in the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (Punjab Act No. 11 of 1962). The word 'prisoner' is defined in clause (d) of section 2 of the said Act, to mean a person confined in a prison under a sentence of imprisonment. The detenu is not a prisoner in that he is not undergoing a sentence of imprisonment. He has been detained under section 3(1) of the COFEPOSA Act. I have not been referred to any other statute under which the petitioner may be claiming his temporary release on parole. If the prayer is construed to mean a prayer for bail, the same is expressly barred under sub-section (6) of section 12 of the COFEPOSA Act. Section 12 of the said Act deals with temporary release of persons detained under the Act. Sub-section (6) was added by COFEPOSA Amendment Act, 1975 (Act No. 35 of 1975) with effect from July 1, 1975. It reads as under :—

“(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.”

The present one is not a case in which the petitioner may have approached the Central Government for his temporary release under section 12 and the Central Government may have turned down the prayer and the petitioner may be challenging the validity of that order.

(4) Even, otherwise, there is a catena of authority for the proposition that a detenu under the COFEPOSA Act cannot be allowed

**Ashok Kumar son of Shri Ved Pal v. The Chandigarh Administration
through its Superintendent Jail Chandigarh and another
(A. P. Chowdhri, J.)**

bail or parole. In *Punam Lata v. M. L. Wadhawan* (1), it was said that there was abundance of authority that High Courts in exercise of their jurisdiction under Article 226 of the Constitution do not release a detenu on bail or parole. Reference was made to *State of Bihar v. Rambalak Singh* (2), in which a Constitution Bench of the apex Court laid down that release of a detenu placed under detention under Rule 30 of the Defence of India Rules, 1962, on bail pending the hearing of a petition for grant of a writ of *habeas corpus* was an improper exercise of jurisdiction. In *State of Uttar Pradesh v. Jiaram* (3), an order passed by the High Court admitting the detenu to bail was set aside by the apex Court. Reference was made to *Samir Chatterjee v. State of West Bengal* (4), in which the Supreme Court set aside the order of the Calcutta High Court releasing a detenu on bail under section 3(1) of the Maintenance of Internal Security Act, 1971.

(5) In *Punam Lata's* case (supra) it was observed that the Court had no power to substitute the period of detention either by abridging or enlarging it. It was observed that the only power that is available to the Court is to quash the order in case it is found to be illegal; that being so it would not be open to the Court to reduce the period of detention by admitting the detenu on parole. In the case, two broad purposes of detention under COFEPOSA Act were mentioned. These are :

- (1) To prevent the person concerned from engaging himself in an activity prejudicial to the conservation of foreign exchange and also preventing him from smuggling activities; and
 - (2) in order to break the link between the person so engaged and the source of such activity and from his associates engaged in that activity or to break the continuity of such prejudicial activities so that it would become difficult, if not impossible, for him to resume the activities.
-

(1) A.I.R. 1987 S.C. 1383.

(2) A.I.R. 1966 S.C. 1441.

(3) A.I.R. 1982 S.C. 942.

(4) A.I.R. 1975 S.C. 1165.

It was pointed out that the release of the detenu on parole if an order of detention was contrary to the aforesaid legislative purposes. It was categorically observed by their Lordships of the Supreme Court that there was no scope for entertaining an application for parole by the Court straightaway.

(6) For the foregoing reasons, it is not possible to grant any relief to the petitioner. It is however, open to the petitioner to move the Central Government for appropriate relief. The present petition fails and the same is dismissed.

P.C.G.

Before : A. L. Bahri, J.

SADHU RAM,—Petitioner.

versus

STATE OF HARYANA THROUGH GOVERNMENT FOOD
INSPECTOR, ROHTAK,—Respondent.

Criminal Misc. No. 5021-M of 1988.

November 30, 1989

Constitution of India, 1950—Art. 20(3)—Criminal Procedure Code (II of 1974)—S. 300—Complaint on the basis of report of Public Analyst—Report of Director Central Food Laboratory different—Judicial Magistrate dropping proceedings on first complaint—Fresh complaint on the basis of the report given by the Director—Competency of such complaint.

Held, that there being divergence of opinion regarding analysis of the sample of food item, it is the report of the Director which supercedes the report of the Public Analyst and obviously when initially the complaint was filed by the Food Inspector on the basis of the report of the Public Analyst, there was no occasion for incorporating the details of the report of the Director. Either the original complaint could be amended after the receipt of the report of the Director or a new complaint could be filed incorporating the details of the report of the Director. What the Chief Judicial Magistrate did on the first complaint,—*vide* order dated September 22, 1986 was that he dropped the proceedings till such time the complainant chose to file fresh complaint on the basis of the report