



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11238 of 2026

Reserved on: 07.08.2026

Date of Decision: 12.08.2026

Vicky Rana....Petitioner

Versus

State of H.P. & Ors.....Respondents

Coram

Hon’ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No.

For the petitioner : Mr Karan Kapoor, Advocate.

For respondents : Mr Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present writ petition for setting aside the order 23.06.2026 (Annexure P-4), vide which the petitioner’s application for seeking parole was rejected. The petitioner has also sought a direction to release him on parole

Whether reporters of the local papers may be allowed to see the judgment? Yes

for 28 days. It has been asserted that the petitioner was convicted and sentenced in F.I.R. No. 10 of 2013, dated 01.11.2013, registered at Police Station Bagga, H.P. The petitioner has completed more than 12 years and 1 month behind bars. He filed an application for parole on 14.01.2022 under the provisions of Himachal Pradesh, Prisoners Good Conduct Act, 1968 (for short "Prisoners Act"), and the Rules framed thereunder. The application was rejected on the ground that the petitioner is a permanent resident of Nepal and the possibility of his absconding to Nepal could not be ruled out. The order passed by the competent authority is bad because it is *dehors* the provisions of the Prisoners Act and the Rules framed thereunder. The petitioner has a right to meet his family members and maintain his ties with society. The application was rejected without due application of mind. The report submitted by the District Administration shows that the petitioner's family has been residing at the current address for 30 to 35 years. They have settled permanently at Nainital, and the apprehension expressed by the District Administration that the petitioner would abscond to Nepal is without any basis. Therefore, it was prayed that the

present petition be allowed and the order passed by the competent authority be set aside.

2. The petition is opposed by filing a reply asserting that the release of a prisoner is governed by Prisoners Act and Rules framed thereunder. The petitioner was convicted by learned Additional Session Judge-II, Solan, vide judgment dated 30.12.2021 and he was sentenced to undergo imprisonment for life, pay a fine of ₹ 20,000/- and in default of payment of fine, to undergo rigorous imprisonment for 6 months for the commission of an offence punishable under Section 120B of Indian Penal Code (IPC), to undergo imprisonment for life, pay a fine of ₹ 20,000/- and in default a payment of fine to further undergo rigorous imprisonment for 6 months for the commission of an offence punishable under Section 396 of the IPC. Both the substantive sentences of imprisonment were ordered to run concurrently. The petitioner has undergone the substantive sentence of 12 years, 7 months and 11 days on 08.07.2026, excluding remission. He has not deposited the fine amount till 08.07.2026. The petitioner had applied for parole of 42 days to meet his family members. His request was duly forwarded to the District Magistrate and Superintendent of

Police, Nainital. The case was not recommended by District Magistrate, Nainital and the competent authority rejected the application in view of non-recommendation. There is no infirmity in the order passed by the competent authority. Hence, it was prayed that the present petition be dismissed.

3. I have heard Mr Karan Kapoor, learned counsel for the petitioner and Mr Prashant Sen, learned Deputy Advocate General, for the respondent/State.

4. Mr Karan Kapoor, learned counsel for the petitioner, submitted that the petitioner had applied for parole to meet his family members; however, his application was wrongfully rejected by the competent authority on the ground that there are chances of the petitioner absconding to Nepal. The report of the District Magistrate shows that the petitioner's family is residing at Nainital. They have purchased the property at Nainital. This fact was overlooked by the competent authority. Therefore, he prayed that the present petition be allowed and the order passed by the competent authority be set aside. He relied upon judgment of Hon'ble Division Bench of this Court in *Arjun vs.*

State of H.P. & others 2023:HHC: 10621 in support of his submission.

5. Mr Prashant Sen, learned Deputy Attorney General for the respondent/State submitted that the petitioner is a citizen of Nepal. He is involved in the commission of a heinous offence and has been sentenced to life imprisonment. He would abscond in case of his release on parole. The competent authority had rejected the application after due application of mind. Therefore, he prayed that the present application be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. It was laid down by the Hon'ble Supreme Court in *Asfaq v. State of Rajasthan, (2017) 15 SCC 55: (2018) 1 SCC (Cri) 390: 2017 SCC OnLine SC 1092*, that parole grants an opportunity to the convict to maintain his links with society. Convicts must breathe fresh air for at least some time. The parole should not be denied to a convict if he maintains good conduct during

incarceration and shows a tendency to reform himself. It was observed at page 60: -

“10. In the first instance, it would be necessary to understand the meaning and purpose of the grant of parole. It would be better understood when considered in contrast with furlough. These terms have been legally defined and judicially explained by the courts from time to time.

11. There is a subtle distinction between parole and furlough. A parole can be defined as the 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, parole is granted for good behaviour on the condition that the parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporary on some basic grounds. In that eventuality, it is to be treated as a mere suspension of the sentence for the 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) a 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 the sentence is already served.

(vi) if conditions of parole are not abided by, the parolee 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 the health of the convict himself.

12. Many State Governments have formulated guidelines on parole in order to bring objectivity to the decision-making and to decide whether parole needs to be granted in a particular case or not. Such a decision in those cases is taken in accordance with the guidelines framed. Guidelines of some of the States stipulate two kinds of parole, namely, custody parole and regular parole. "Custody parole" is generally granted in emergent circumstances, like:

(i) death of a family member;

(ii) marriage of a family member;

(iii) serious illness of a family member; or

(iv) any other emergent circumstances.

13. As far as "regular parole" is concerned, it may be given in the following cases:

(i) serious illness of a family member;

(ii) critical conditions in the family on account of the accident or death of a family member;

(iii) marriage of any member of the family of the convict;

(iv) delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;

(v) serious damage to the life or property of the family of the convict, including damage caused by natural calamities;

(vi) to maintain family and social ties;

(vii) to pursue the filing of a special leave petition before this Court against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.

14. Furlough, on the other hand, is a brief release from prison. It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.

15. A convict, literally speaking, must remain in jail for the period of the sentence or the rest of his life in case he is a life convict. It is in this context that his 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, the redemption and rehabilitation of such prisoners for the good of society must receive due weightage while they are undergoing a sentence of imprisonment.

16. This Court, through various pronouncements, has laid down the differences between parole and furlough, a few of which are as follows:

(i) Both parole and furlough are conditional releases.

(ii) Parole can be granted in case of short-term imprisonment, whereas furlough is granted in case of long-term imprisonment.

(iii) The duration of parole extends to one month, whereas in the case of furlough, it extends to fourteen days maximum.

(iv) Parole is granted by the Divisional Commissioner, and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, a specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted a number of times, whereas there is a limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of society.

(See *State of Maharashtra v. Suresh Pandurang Darvakar* [State of Maharashtra v. Suresh Pandurang Darvakar, (2006) 4 SCC 776: (2006) 2 SCC (Cri) 411] and *State of Haryana v. Mohinder Singh* [State of Haryana v. Mohinder Singh, (2000) 3 SCC 394: 2000 SCC (Cri) 645].)

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 can maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, the 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 out 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 society. Another objective that this theory underlines is that even such convicts have the right to breathe fresh air, *albeit* for short periods. These gestures on the part of the State, along with other measures, go a long way towards the redemption and rehabilitation of such prisoners. They are ultimately aimed at the good of society and, therefore, are in the public interest.

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. The main purpose of such provisions is to afford 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 interests have 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 a threat to the law and order of 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 a great number of crimes are committed by the offenders who have been put back on the street after conviction. Therefore, while deciding 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 a tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for the 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 they aspire to live as law-abiding citizens. Thus, the parole programme 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 matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to 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 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 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 whether there can be any presumption that a person who is convicted of a serious or heinous crime is to be, ipso facto, treated as a hardened criminal. The hardened criminal would be a person for whom it has become a habit or way of life, and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case, consideration should be given as to whether he is showing signs of reform himself and becoming 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 society. The mere nature of the offence committed by him should not be a factor to deny the parole outright. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of the 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 tranquillity, 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 the recourse made available to the prisoners. Being in a civilised society organised with law and a system as such, it is essential to ensure 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 (2) v. State (UT of Delhi)* [*Sunil Batra (2) v. State (UT of Delhi)*, (1980) 3 SCC 488: 1980 SCC (Cri) 777], *Maneka Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] and *Charles Sobraj v. Supt., Central Jail* [*Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104: 1978 SCC (Cri) 542].]

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 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 (*sic*) any change in the mind of the criminal. It also shows that a criminal is hardcore, who is beyond correctional therapy. If the correctional therapy has not been made in itself, in a particular case, such a case can be rejected on the aforesaid ground, i.e. on its merits.

25. We are not oblivious of the fact that there may be hardcore criminals who, by reason of their crime and the methods of dealing with the crime, form associations,

loyalties and attitudes which tend to persist. There may even be peer pressure when such convicts are out to commit those crimes again. There may be pressure of being ostracised from delinquent groups, which may lead them to commit the crime again. Persistence in criminal behaviour may also be due to personality traits, most frequently due to pathological traits of personality, such as mental defectiveness, emotional instability, mental conflicts, egocentrism and psychosis. In regard to relapse or recidivism, Frank Exner, a noted criminologist and sociologist, points out that the chances of repeating increase with the number of previous arrests and the interval between the last and the next offence becomes shortened as the number of previous crimes progresses [Frank Exner, *Kriminologie*, pp. 115-120]. The purpose of the criminological study is the prognosis of the improvable occasional offenders and that of the irredeemable habitual offenders and hardcore criminals. To differentiate the recidivists from non-recidivists and dangerous and hard-core criminals from occasional criminals had been enumerated by Exner in the following flowsheet:

- (i) Hereditary weakness in the family life.
- (ii) Increasing tempo of criminality.
- (iii) Bad conditions in the parental home.
- (iv) Bad school progress (especially in deportment and industriousness).
- (v) Failure to complete studies once begun.
- (vi) Irregular work (work shyness).
- (vii) Onset of criminality before 18 years of age.
- (viii) More than four previous sentences.
- (ix) Quick relapse of crime.
- (x) Interlocal criminality (mobility).

(xi) Psychopathic personality (diagnosis of an institutional doctor).

(xii) Alcoholism.

(xiii) Release from the institution before 36 years of age.

(xiv) Bad conduct in the institution.

(xv) Bad social and family relations during the period of release.

At the same time, as criminality is the expression of the “symptom” of a certain disorder in the offenders, they can be easily reformed if they are rightly diagnosed and the correct treatment is administered to them.

8. The custody certificate, placed on record, shows that the petitioner’s conduct inside jail was satisfactory.

9. Rule 3(2) of the Prisoners Rules specifically provides that the District Magistrate and Superintendent of Police shall give their opinion whether the temporary release on parole was opposed on the ground that the prisoner was dangerous to the security of the State or prejudicial to the maintenance of public order. Therefore, the Rule only provides two grounds for opposing the application for parole. It was laid down by the Punjab and Haryana High Court in *Joginder Singh v. State of Punjab*, 1988 SCC OnLine P&H 638: ILR (1989) 1 P&H 251 that the security of the State is endangered by the crimes of violence intended to overthrow the government and not by minor

breaches of public peace. Public Order must be distinguished from law and order. It was observed at page 255:

“7....A key to the scheme of the Act is provided by section 6, where satisfaction of the State Government or the releasing authority is expressly limited to endangering the security of the State and the maintenance of public order. The expressions “Security of State” and “Public order” occur in Article 19(2) of the Constitution. These expressions have been the subject matter of Judicial Consideration, and they have acquired a precise meaning. Thus, security of the State is endangered by crimes of violence, intended to over-throw the Government, waging of war and rebellion against the government, external aggression or war, but not by minor breaches of public peace or tranquillity, such as unlawful assembly, riot, affray, rash driving, promoting enmity between classes and the like (*vide Ramesh Thappar v. State of Madras [1950 S.C.R. 594.]*). The concept of ‘public order’ must be distinguished from the popular concept of ‘law and order’ and of ‘security of State’. They refer to ‘three concentric circles’. Law and order represent the largest circle, within which is the next circle representing public order, and the smallest circle represents the security of the State (*Vide Ram Manohar v. State of Bihar [(1966) 1 S.C.R. 709(746)]*). Hence, an activity which affects ‘law and order’ may not necessarily affect public order, and an activity which may be prejudicial to public order may not endanger the security of the State. The twin grounds of endangering the security of the State and public order may or may not be exhaustive of the grounds for refusing temporary release, but these grounds go a long way to suggest that grounds for refusal must be these and like grounds. The apprehension that the prisoner may indulge in violence, especially directed towards the members of the opposite party or the witnesses on whose testimony he was sentenced to imprisonment, does not broadly speaking justify the refusal of the benefit of release

envisaged under the Act. This conclusion is justified because the Act and the Rules framed thereunder contain a larger number of in-built safeguards. To mention a few of such safeguards, the temporary release is subject to such conditions as may be imposed before the release. The release is for a limited period of 4 to 6 weeks under section 3 and 3 weeks during the first year and 2 weeks during each successive year under section 4. The temporary release under section 4 is available only to prisoners who have been sentenced to long terms of imprisonment of not less than 5 years. A condition precedent under section 4 is that the prisoners must have earned at least three annual good conduct remissions. A habitual offender, as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, or a person convicted of robbery or dacoity or such other offences as the State Government may by notification specify, is not entitled to be released. Under sub-section (2) of section 8 of the Act, if a prisoner fails to surrender himself within a period of 10 days from the date on which he should have surrendered, he is liable to be arrested by the police without a warrant in order to undergo the unexpired portion of the sentence. If he surrenders within the said period of 10 days before the Superintendent of Jail, the prisoner is liable to be awarded any of the jail sentences mentioned in clauses (a) to (e) of sub-section (3) of section 8. Section 9 makes it an offence for the prisoner if he fails to surrender within the time aforesaid, and he is liable to a sentence of up to 2 years' Imprisonment. Elaborate provisions have been made for constant watch on the prisoner by the local police at the place or places where the prisoner spends his period of parole or furlough. If the prisoner, while on parole or furlough, commits any offence, his release order is liable to be cancelled forthwith. These provisions have been intended to provide adequate safeguards to ensure that the released prisoner surrenders to jail custody to undergo the remaining sentence, besides ensuring that during his release, he commits no offence. The aim of a

sentence of imprisonment, especially a long-term imprisonment, is to reform the prisoner, besides being a deterrent to him as well as others. The aim is not to make him more hardened, more brutal, more cunning and more dangerous to society. (See *Rakesh Kaushik v. B.L. Vig, Superintendent, Central Jail, New Delhi* [1980 Supp SCC 183: AIR 1981 S.C. 1767]. Prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of those rights is violated, the Court which is to use the words of Krishna Iyer J. (as his Lordship then was) “net a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope” will immediately spring into action and run to his rescue. (Vide *Francis Coralie Mullin v. Administration of Union Territory of Delhi* [(1981) 1 SCC 608: AIR 1981 S.C. 746]. One of these rights is personal liberty. Personal liberty would include the right to socialise with members of the family and friends, subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21 of the Constitution of India. (*Francis Coralie Mullin*), (supra). A long period of incarceration, where a person is cut off from the established influence of the family, tends to brutalise the prisoner and blunt his finer sensibilities so that the end product may perhaps be more criminal than the one at the point of entry into the jail. The aforesaid observations made by the highest Court of the country apply with equal force to the case under consideration. This then is the philosophy underlying the Act.

10. It was submitted that the nature of the offence is heinous; however, that is not a relevant consideration. It was held by the Hon'ble Supreme Court in *Shor vs. State of Uttar*

Pradesh and Anr. (05.08.2020 - SC Order):

MANU/SCOR/34434/2020 that the parole cannot be rejected on the ground that the crime is heinous. It was observed:

“Merely repeating the fact that the crime is heinous and that release of such a person would send a negative message against the justice system in society are factors de hors Section 2. Conduct in prison has not been referred to at all, and the Senior Superintendent of Police and the District Magistrate confirming that the prisoner is not "incapacitated" from committing the crime is not tantamount to stating that he is likely to abstain from crime and lead a peaceable life if released from prison.

11. This Court held in **Harbhajan Singh v. State of H.P., 2019 SCC OnLine HP 3599**, that the nature of the offence cannot be a ground to deny parole when the prisoner's conduct shows a tendency to reform himself. It was observed:

“17. For rejection of an application for parole, there are two grounds set out in Section 6 of the Act. Firstly, in case a prisoner is released, he will likely endanger the security of the State. Admittedly, the petitioner has been convicted for the offence committed under Section 302 IPC. But, in no way could it be inferred that he is likely to endanger the security of the State, and even if so, the State has got enormous powers to put restrictions on the petitioner to protect the Security of the State. The second ground is the maintenance of public order. In this regard, in the response made by the District Magistrate, there is no reference as to whether he made a threat to public order.

18. When these two grounds, set out in Section 6 of the Act, are not reflected or mirrored in the report of the District Magistrate, we have to presume that the District

Magistrate has given its report without applying its mind. When a provision or a statute directs an officer to do a particular job in a particular manner, it shall be the duty of that officer to do the said job in that particular manner only. When a District Magistrate is directed to make a report on the basis of an assessment in an objective manner, he shall do it in that manner only.

19. Further, the rejection by the Government or the officer authorised by the Government should be on two grounds, namely, when it is likely to endanger the security of the State or the maintenance of the public order, which are lacking in the instant case.

20. In *Francis Coralie Mullin v. The Administrator, UT Delhi*, (1981) 1 SCC 608: AIR 1981 SC 746, Hon'ble Mr Justice Marshal has aptly said, and we quote. "I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the court's holding that the inmate's interest."

21. In *Kharak Singh v. State of UP*, AIR 1963 SC 1295, it has been held that life means more than mere animal existence. The right to live is not restricted to mere animal existence. It means something more than just physical survival.

22. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248: AIR 1978 SC 597, which was followed in *Francis Coralie v. Delhi Administration*, supra, it has been held that the right to life does not mean mere confinement to physical existence, but it includes within its ambit the right to live with human dignity.

23. Seeking parole/remission/premature release, or furlough, is not a right of a detenu. However, the same has to be considered in the light of the observations made hereinabove. The consideration should always keep in view the rights of the prisoners. The release of a prisoner 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 during incarceration and show a tendency to reform themselves and become good citizens.

24. The Hon'ble Supreme Court in *Asfaq v. State of Rajasthan*, (2017) 15 SCC 55, in para 15 of the judgment has held as under:

“15. A convict, literally speaking, must remain in jail for the period of the sentence or the rest of his life in case he is a life convict. It is in this context that his 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 the good of society must receive due weightage while they are undergoing a sentence of imprisonment.”

25. From the discussion made hereinabove, it is clear that the Hon'ble Supreme Court has propounded a reformatory theory. Under the said concept, an opportunity is to be granted to a person to get himself reformed, and in case he gets himself reformed, he will be a person to live in society. It is also worthwhile to extract the relevant portions of paras 17 and 18 of the said judgment herein:

“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 can maintain his family and social contact. This reason finds justification in one of the

objectives behind sentence and punishment, namely, the reformation of the convict.....

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. The main purpose of such provisions is to afford them an opportunity to solve their personal and family problems and to enable them to maintain their links with society...”

26. Many a time, the State takes up the ground that the prisoner has committed a heinous offence, and granting parole/remission or pre-mature release is likely to endanger the security of the State or the maintenance of the public order. From the above discussion, we feel that the conviction in a serious and heinous crime cannot be the reason for denying parole per se. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interests have 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 a threat to the law and order of society, should not be released on parole. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of the offence for which he was sentenced.

27. In *Inder Singh v. State (Delhi Administration)*, (1978) 4 SCC 161, the Hon'ble Supreme Court has held that if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up.

28. In *Shakuntala Devi v. State of Delhi*, (1996) 36 DRJ 545, it has been held as under:

“5. In Poonam Lata v. M.L. Wadhawan, it has been held by their Lordship that “Release on parole is a wing of reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen.”

In Inder Singh v. State, the Apex Court has devised another humanising strategy, viz., a guarded parole release every year, for at least a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by living in a small world of his own, cribbed, cabined and confined within the four walls of the prison. In the case of Inder Singh (supra), their lordships directed that:—

“..... if the behaviour of the prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be released on parole for two months. ‘Their lordships further added that “Article 21 of the Constitution is the jurisdictional root for this legal liberalism.”

12. In the present case, the District Magistrate, Nainital mentioned in his letter that the petitioner was residing at Kaladhungi, Nainital for 30-35 years. The report submitted by Superintendent of Police, Haldwani mentions that the petitioner's parents had constructed a house in Ward No. 2, Nagar Panchayat Kaladhungi, Nainital. His father is a contractor, and his mother is a homemaker. His father had purchased the property from Umed Singh Negi. His parents

disclosed that they had not met the petitioner for five to six years and they wanted to meet the petitioner. No adverse entry was found in any of the police stations against the petitioner.

13. The report of the Superintendent of Police and District Magistrate clearly mentioned that the petitioner's parents have constructed a house. The petitioner's father has also purchased the property. It was laid down by the Hon'ble Division Bench of this Court in *Arjun (supra)* that when the convict was residing in the State of Himachal Pradesh even though he is a citizen of Nepal, the parole could not be denied to him on the ground that he is a citizen of Nepal. It was observed:

6(iii) One more aspect needs to be taken note that Section 6 of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968, stipulates that the request for temporary release-parole can only be denied if the release is likely to endanger the security of the State or the maintenance of public order. In the present case, the respondents have not placed on record any cogent and convincing material justifying that the temporary release of the petitioner on parole would infringe the mandate of Section 6 of the Act, as mentioned above. Thus, once the case of the petitioner does not fall in any of the exceptional categories therefore, the inaction of respondents and the impugned order denying parole to the petitioner does not stand the test of judicial scrutiny and is set-aside.

6(iv). Notably, as per the Custody/Jail Certificate dated 29.05.2023 Annexure-P-5, the conduct and

behaviour of the petitioner has been found to be satisfactory. In these circumstances, the denial of parole indefinitely when, nothing adverse exists will frustrate and defeat the very object of granting parole, as carved out by the enactment(s) and the law laid down by the Hon'ble Apex Court, in case of *Asfaq (supra)*. In view of this, the inaction of the respondents and the impugned order is not tenable in law

6(v). A perusal of the Instruction dated 26.08.2023 furnished by the respondents reveal that the claim of the petitioner for parole was not recommended in view of the report that the convict is a permanent resident of Nepal and there is no permanent address of the said convict in State and there is an apprehension that if the convict is released on parole he may jump the parole and abscond to the Nepal. In addition to this, the respondents have relied upon Annexure-C to these instructions i.e. an order passed by this Court in CWP No. 449 of 2020 on 27.02.2020 whereby the decision of the respondents in denying the parole to the petitioner was upheld in view of the fact that the petitioner was a permanent resident of Nepal and has no residential house in the locality or within the jurisdiction of District Magistrate concerned nor his parents and family members are residing within the State of Himachal Pradesh. *In total contrast to the earlier story, the petitioner has stated in para 10 of the present writ petition as under:-*

“10. It is most respectfully submitted here is that petitioner/prisoner has born and brought up at Manali, Himachal Pradesh and having a wife, minor daughters and father who has attained the age of senior citizen and earning his livelihood in Himachal Pradesh and petitioner/prisoner is also having kith and kin who lives in Himachal Pradesh.”

In view of the averments made in Para 10 of the present writ petition, which are supported by an affidavit, to the effect that kith and kin i.e. wife, minor daughter and

father of the petitioner live in Himachal Pradesh, we consider it appropriate that the request of the petitioner needs to be re-examined, without being swayed away by the earlier rejection orders.

14. Therefore, in view of the binding precedent of this Court, the parole could not have been rejected on the ground that the petitioner is a citizen of Nepal when his family members are residing at Nanital for 30-35 years.

15. In view of the above, the present petition is allowed, and the order dated 23.06.2026 (Annexure P-4) is ordered to be set aside. The petitioner is ordered to be released on parole for four weeks subject to his furnishing personal bond in the sum of ₹1,00,000/- and two surety bonds of the like amount to the satisfaction of the Superintendent Jail with an undertaking to maintain good conduct during the period of parole and to surrender before the Superintendent Jail after the expiry of the period of parole. The Probation Officer is also directed to maintain a close watch on the activities of the petitioner and to report any deviation from the direction issued by the Court.

16. The Superintendent, Jail is free to impose any other suitable condition at the time of the release of the petitioner.

17. The present petition stands disposed of, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

12th nAugust, 2026
(Ravinder)

High Court of HP