

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 1894 of 2014
Date of decision: 14.09.2015

Randhir

....Petitioner

versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MRS.JUSTICE REKHA MITTAL

Present: Mr. J.S. Bains, Advocate
for the petitioner.

Mr. Arshvinder Singh, Addl. A.G., Punjab for the State.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.S. SARON, J.

Heard learned counsel for the parties.

The criminal writ petition has been filed under Articles 226 and 227 of the Constitution of India read with Section 3 (1) (c) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act' – for short) for grant of four weeks parole to the petitioner for repairing his house.

The petitioner has been convicted for the offence punishable under Section 302 Indian Penal Code ('IPC' – for short) by the learned Additional Sessions Judge, Amritsar vide judgment

dated 18.09.2013. By a separate order passed on 19.09.2013, he has been sentenced to undergo life imprisonment; besides pay a fine of Rs. 5,000/-. Against the said conviction and sentence, the petitioner has filed Criminal Appeal No. D-1492-DB of 2013, which was admitted on 02.12.2013 and is pending in this Court.

The petitioner made a request to the Superintendent Central Jail, Amritsar-respondent No. 2 on 27.01.2014 to grant him parole for a period of four weeks to repair his house. The case of the petitioner was forwarded to the Director General of Prisons. However, the petitioner came to know that his case had been rejected on the ground that if he was released on parole, he would abscond. The petitioner is stated to be in custody from 25.05.2009 till date.

Notice of motion was issued in the case.

Reply by way of an affidavit has been filed by Shri Ravinder Kumar Sharma, PPS, Superintendent, Central Jail Amritsar (respondent No.2) on behalf of respondents No. 1 to 3.

According to the reply that has been filed, it has inter-alia been stated that the District Magistrate (respondent No.3) did not recommend the release of the petitioner on parole vide order dated 26.08.2014 (Annexure R-1). It is submitted that the said order (Annexure R-1) was passed on the basis of report dated 05.08.2014 (Annexure R-2) from the Commissioner of Police, therefore, the petitioner is not entitled for parole.

We have given our thoughtful consideration to the matter. The petitioner has been convicted in case FIR No. 94 dated 20.02.2009 registered at Police Station Sadar, District Amritsar for

the offence under Sections 302 IPC. The learned Additional Sessions Judge, Amritsar vide her order dated 18.09.2013 held the petitioner guilty for the offence punishable under Section 302 IPC. By a separate order passed on 19.09.2013, the petitioner has been sentenced to undergo life imprisonment; besides, pay a fine of Rs. 5,000/-. The release on parole of the petitioner has been declined on the ground that he can abscond and commit the offence again; besides, there is threat to the security of the State and maintenance of public order, if he is released on parole. The said decision of the District Magistrate is based on the report dated 05.08.2014 (Annexure R-2) of Commissioner of Police, Amritsar City wherein it is mentioned that the petitioner can abscond and commit the offence again; besides, there is threat to security of the State and maintenance of public order.

Section 3 (1) of the Act provides for temporary release of prisoners on certain grounds. Section 3 (1) (d) provides for temporary release where it is desirable so to do for any other sufficient cause. Section 3 (1) (d) of the Act reads as under:-

3. Temporary release of prisoners on

certain grounds.- (1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that-

(a) xxxxxx

(b) xxxxxxxx

(c) xxxxxxxx

(d) it is desirable so to do for any other sufficient cause.

The petitioner has sought temporary release on the ground that his house needs repair. It is not the case of the respondents that the house does not need repair. In fact no inquiry is shown to have been made in this regard. The temporary release has been declined to the petitioner only on the ground that he is likely to abscond and commit the offence again. According to the Police Commissioner and the District Magistrate this would constitute a threat to the security of the State and the maintenance of public order.

In fact temporary release of prisoners in terms of the Act can be declined on the ground specified under Section 6 of the Act. Sub-Section (ii) of Section 6 of the Act reads as under:-

“No prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order.”

In terms of the above provision, a prisoner is not entitled to be released under the Act if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that the release of the petitioner is likely to endanger the security of

the state or maintenance of public order.

In the present case, threat to the security of the State and the public order is sought to be made out from the fact that the prisoner (petitioner) is likely to abscond. For the said purpose, in fact, sufficient amount of security can be taken and other preventive measures can be adopted. The mere fact that the prisoner is likely to abscond cannot by itself be taken as a circumstance that would endanger the security of the State or the maintenance of public order.

The provisions of the Act are a beneficial legislation to provide for temporary release of prisoners on parole and further their reform. The administrative action of the District Magistrate in declining temporary release on parole on the ground that the prisoner is likely to abscond like all other administrative actions is subject to judicial review. Judicial review of administrative action is permissible on the principles that are well settled and delineated, which inter alia include illegality, irrationality and procedural impropriety. Under the head of irrationality fall cases of exercise of discretionary power where the power is exercised for an irrelevant consideration or for an improper purpose or on the dictates of a superior. Besides, an administrative decision is to be supported by reasons which are valid and the validity of the decision stands or falls by the reasons given in the order which is subject to review.

The reasons given by the learned District Magistrate in declining parole to the petitioner are not valid as by no stretch of imagination can it be said that the petitioner who has been convicted for the offence under section 302 IPC in case he is

released on parole would abscond, which would endanger the security of the State or the maintenance of public. An act that may affect law and order does not necessarily also affect public order. Similarly, an act that affects public order does not necessarily affect the security of the State. The true test to determine whether an act of a person would affect or not affect the maintenance of public order or the security of the State, is not the kind of act but the potentiality of the act in question. One act may affect only the individuals while the other even though of a like nature may have such an impact that it would disturb the public peace which is likely to affect the maintenance of public order or the security of State.

The act of a prisoner likely to abscond in a case of the present nature where he has been convicted for the offence under Section 302 IPC would not affect the maintenance of public order or the security of the State. The apprehension of absconding can be ensured by getting heavy surety and adopting other measures. However, declining temporary release on parole on the premise that the petitioner would abscond which would resultantly be a threat to maintenance of public order or security of the State would be clearly un-sustainable when subjected to judicial review in exercise of the supervisory writ jurisdiction of this Court. Therefore, the decision taken by the learned District Magistrate in declining parole can be said to be irrational and not based on sound and valid reasons. In the circumstances, the order dated 26.08.2014 (Annexure R-1) declining parole to the petitioner is not sustainable and the same is liable to be quashed.

Accordingly, the writ petition is allowed and the order dated 26.08.2014 (Annexure R-1) is set-aside and quashed and the learned District Magistrate, Amritsar shall consider the matter afresh, in accordance with law. The exercise shall be carried out as expeditiously as possible and preferably within four weeks of the receipt of copy of the order.

(S.S. SARON)
JUDGE

14.09.2015
manoj

(REKHA MITTAL)
JUDGE