

CRWP-1090-2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-1090-2015

Date of decision :January 22, 2016

Jassa Singh @ Jassa

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Mr. Arshvinder Singh, Addl. A.G., Punjab.

S.S. SARON, J.

The petitioner by way of the present writ petition under Article 226 of the Constitution of India seeks quashing of the order dated 12.05.2015 (Annexure P-2) passed by the District Magistrate, Amritsar-respondent No.3 by which the case of the petitioner for temporary release on parole for agricultural purposes has been rejected.

The petitioner has been convicted in case FIR No.17 dated 25.10.2012 registered at Police Station State Special Operation Cell, Amritsar for the offences punishable under Sections 21 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 489-C

of the Indian Penal Code. He has been sentenced to undergo imprisonment for twelve years, besides, pay a fine of ₹2,10,000/-. At present the petitioner is undergoing his imprisonment. He has filed criminal appeal i.e. ***CRA No. D-1854-DB-2014*** against his conviction and sentence, which is pending in this Court.

The family of petitioner resides in the village and he has agricultural property in his name as his parents have since died. The petitioner is having his wife and minor children in the village. There is no one else except the petitioner to look after the agriculture property in his village.

Learned counsel for the petitioner has shown Jamabandi for the year 2013-14 of village Manjh, Tehsil Ajnala, District Amritsar in which the petitioner-Jassa Singh @ Jassi son of Jagir Singh is recorded as owner of 1/6th share in land measuring 11 marlas, besides, exclusive owner of land measuring 17 kanals 11 marlas and also owner of land measuring 39 kanals 9 marlas.

In terms of impugned order, it is merely stated that the parole is being declined to the petitioner because prisoners under the Narcotic Drugs and Psychotropic Substances Act, whenever they are released on parole, generally engage themselves in smuggling activities causing danger to security of the country. It is stated that there is no guarantee that the prisoner would not involve himself in any criminal activities. It is stated that generally, heroin or smack is again recovered from prisoners on parole. The said stand has been reiterated in the reply filed by Mr.Ravinder Kumar, Sharma, PPS, Superintendent, Central Jail, Amritsar on behalf of respondents No.1 and 2.

After giving our thoughtful consideration to the matter, it may be noticed that parole to a prison undergoing imprisonment can be declined in terms of Section 6 (ii) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act' for short). Section 6 of the Act reads as under:-

“[6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released.____

Notwithstanding anything contained in Sections 3 & 4, --

(i) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and

(ii) *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.” (emphasis added)*

In terms of the above Section 6 (ii) of the Act, 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 his release is likely to endanger the security of the State or maintenance of public order. Temporary release of a prisoner on parole or furlough as the case may be can be denied if his release is likely to endanger the security of the State or the maintenance of public order. For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be

material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.

In the circumstances we are satisfied that the grounds taken and the reasoning given by the District Magistrate in his impugned order for declining the parole to the petitioner are unsound and without any basis on material, besides, are based on mere generalization.

Consequently, the petition is allowed. The impugned order passed by the District Magistrate, Amritsar dated 12.05.2015 (Annexure P-2) is set aside and quashed. The learned District Magistrate shall reconsider the matter afresh. The necessary exercise shall be carried out as expeditiously as possible and preferably within six weeks from the date of receipt of certified copy of this order.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

January 22, 2016

Gaurav Sorot