

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

CRWP No. 1110 of 2015

Date of decision: 05.01.2016

Bansi Lal

..Petitioner

Versus

State of Punjab & Others

..Respondents

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

Present: Mr. A.S. Trikha, Advocate for the petitioner.

Ms. Amarjit Kaur Khurana, Additional AG, Punjab
for respondents No. 1 and 2.

None for respondent No. 3.

S.S. SARON, J.

Learned counsel for the State has filed short affidavit of Sh. Gurcharan Singh Dhaliwal, Deputy Superintendent, Central Jail, Patiala on behalf of respondents No. 1 and 2. The same is taken on record.

As per office report, notice issued to respondent No. 3 District Magistrate, Partapgarh has been received back unserved. In view of the reply filed on behalf of respondents No. 1 and 2, notice to respondent No. 3 is not necessary.

Heard learned counsel for the parties.

The petitioner Bansi Lal has been convicted and sentenced vide order dated 08.09.2014 in case FIR No. 107, dated 11.08.2011, registered at Police Station Julkan, District Patiala for

the offence punishable under Section 18 of the Narcotic Drugs Psychotropic Substances Act, 1985. He has been sentenced to undergo Rigorous imprisonment for 12 years, besides, pay a fine of ₹ 1,00,000/- and in default thereof undergo further rigorous imprisonment for 01 year. During incarceration of the petitioner, he applied for his temporary release on parole for four weeks in terms of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962, ('Act' - for short). Section 3 of the Act envisages that the State Government may in consultation with the District Magistrate and subject to such conditions and in such a manner as may be prescribed release temporarily for a period specified in sub section (2) any prisoner if the State Government is satisfied on any of the circumstances as enumerated in Clauses (a) to (d) therein are conformed to. The said provision provides for consultation with the District Magistrate concerned in case a prisoner is to be temporarily released on parole.

The jail authorities vide letter dated 12.02.2015 sent the application of the petitioner for grant of temporary release on parole to the District Magistrate Partapgarh (respondent No. 3). A request was made for verification in respect of the petitioner in the light of the judgment of this Court in the case of Criminal Misc. No. 34013 of 2009 dated 26.04.2010. In terms of the said judgment it has been held that the verification report on a parole application of the convict should be considered by the District Magistrate within 21 days. Further, the report should also be based on the aspect that the release of the convict is likely to endanger the

security of the State or the maintenance of Public order.

The District Magistrate Partapgarh respondent No. 3, vide letter dated 01.05.2015 (Annexure P-1) replied that the case of the petitioner was placed in the meeting of the Committee for grant of parole to convicts held on 10.03.2015. The parole case of the convict (petitioner) was considered in the said meeting. The District Welfare Officer, Partapgarh did not recommend the parole of the petitioner; besides, the Superintendent of Police, Partapgarh in his report intimated that the convict (petitioner) may deal in narcotics and jump parole. Accordingly, parole to the petitioner was unanimously not recommended in the meeting of the Committee held on 10.03.2015. The minutes of the meeting were recorded in the office of the Collector and District Magistrate, Partapgarh on 13.03.2015. The said decision has been conveyed vide impugned letter dated 01.05.2015 (Annexure P-1).

The petitioner by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the said letter dated 01.05.2015 and decision dated 13.03.2015 and for grant of temporary release on parole for four weeks.

In terms of the reply filed on behalf of respondents No. 1 and 2 it is submitted that the report of the District Magistrate, Partapgarh clearly states that the Superintendent of Police, Partapgarh did not recommend the parole in respect of the petitioner as he was likely to endanger the security of the State or the maintenance of Public order. Therefore, his case for parole has not been recommended.

Learned counsel for the petitioner submits that the statutory provisions for temporary release on parole is a beneficial legislation for the prisoners and the petitioner is liable to be released on temporary basis on parole. There is no question of his jumping the parole or indulging in Narcotic Drugs and Psychotropic Substances. Besides, there was/is no material before the Superintendent of Police, Partapgarh to record such a report. In any case it is submitted that the parole can be denied to the petitioner only on the ground provided for in Section 6 of the Act.

In response, learned counsel for the State has submitted that the temporary release of the petitioner on parole is likely to endanger the security of the State and the maintenance of public order as the Superintendent of Police, Partapgarh has observed that the petitioner while on parole is likely to jump parole and indulge in narcotics.

We have given over thoughtful consideration to the matter. The petitioner, as already noticed, has been ordered to undergo rigorous imprisonment for 12 years consequent to his conviction in a case under the Narcotic Drugs and Psychotropic Substances Act. During incarceration of a prisoner in jail after his conviction he is entitled for temporary release on parole which though is a concession and not a right. However, in order to reform a prisoner a periodic temporary release on parole for short durations is necessary. This is a welfare measure in the interest of a prisoner. Temporary release on parole in terms of Section 3 of the Act can be granted in situations like :-

- (a) a member of the prisoner's family had died or is

- seriously ill; or
- (b) the marriage of the prisoner's son or daughter is to be celebrated; or
- (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation (on his land or any other land cultivated by him) and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence ;or
- (d) it is desirable so to do for any other sufficient cause.

The procedure for temporary release is provided for by Rule 3 of the Punjab Good Conduct Prisoners' (Temporary Release), Rules, 1963 ('Rules'- for short) which reads as under:-

"3. Procedure for temporary release. [Sections 3, 4, 10 (1), 10 (2) (b), 10 (2) (d) and 10 (2) (e)]. -(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who after consulting the Superintendent of Police of his District shall forward the case with his recommendations to the

Inspector-General. The Inspector-General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the Security of State or prejudicial to the maintenance of public order.

[Provided that no such application shall be processed by the Superintendent of Jail, unless the prisoners had maintained good conduct after his conviction atleast for four months in jail.]

(3) If, after making such enquiry as it may deem fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant in Form B ordering the temporary release of the prisoner, specifying therein (i) the period of release, (ii) the place or places which the prisoner is allowed to visit during the period of such temporary release, and the amount for which the security bond and the surety bond shall be furnished by the prisoner in Forms C and D respectively.

Provided that the amount of the security bond and the surety

bond shall not exceed twenty thousand rupees in each case.

(4) On receipt of the release warrant the Superintendent of Jail shall inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail and the District Magistrate.

(5) On receipt of the information from the District Magistrate that the necessary bonds have been furnished the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

(6) The Superintendent of jail shall also immediately forward to the Officer-in-charge of the Police Station within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the release certificate in Form E. The Officer incharge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector-General.

(7) The date of release as well as the date on which the prisoner surrenders himself under sub-section (1) of section 8 of the Act shall be reported by the Superintendent of Jail to the Inspector-General who will inform the Government

accordingly".(Emphasis added)

The said procedure provides for temporary release of a prisoner on parole. Rule 3 (2) of the Rules requires that the District Magistrate, before making any recommendation, is to verify the facts and grounds on which release has been requested and is to give his opinion whether the temporary release on parole or furlough is opposed on the grounds of prisoner's presence being dangerous to the security of State or prejudicial to the maintenance of public order. In fact temporary release on parole or furlough as the case may be is normally to be granted but is to be declined in case the Releasing Authority is of the view that the presence of the prisoner would be dangerous to the security of the State or the maintenance of public order. This is specifically provided for by Section 6 (ii) of the Act, Section 6 of the Act which 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 and 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)

The provision of Section 6 (ii) of the Act above envisages that no prisoner is to be 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 authorised officer in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of Public order. Therefore, temporary release of the petitioner was liable to be declined only if his release was likely to endanger the security of the State or the maintenance of Public order.

The term 'Security of the State' out of the expressions of 'law and order', and 'public order' is considered more grave. It may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorists operations engineered by foreign agencies. It can also be effected by passing of classified information like documents, secrets, maps etc. to foreign countries or through undesirable foreign links. An act which poses a threat to the State

is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the concerned District Magistrates and competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the concerned District Magistrate and/or the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order as the case may be for temporary release of prisoners on parole.

The District Magistrate, Partapgarh (respondent No. 3) in his report has merely mentioned that the case of the petitioner was considered in the meeting of the Collector for advice on release on parole on 10.03.2015, which unanimously did not recommend his release. It is also mentioned that the Superintendent Police Partapgarh in his report intimated that the convict (petitioner) may deal in narcotics and jump parole. The question as to whether the release of the petitioner on parole is likely to endanger the security of the State or the maintenance of Public order is not shown to have been considered in the decision making process, which is the requirement in terms of Section 6 (ii) of the Act as also Rule 3(2) of the Rules on the basis of which temporary release on parole may be declined.

Therefore, in the facts and circumstances of the case, it would just and expedient that the matter is reconsidered by the District Magistrate Partapgarh (respondent No. 3) as also by the competent authority under the Act for the temporary release of the petitioner on parole.

Accordingly, the writ petition is allowed. The order dated 01.05.2015 (Annexure P-1) along with the report dated 13.03.2015 attached with it are set aside insofar as it concerns the petitioner and the matter shall be reconsidered by the District Magistrate, Partapgarh (respondent No. 3) as also by the competent authority under the Act as expeditiously as possible and preferably within a period of four weeks of receipt of certified copy of the order by the District Magistrate Partapgarh (respondent No. 3) and four weeks

thereafter by the competent authority under the Act. The Superintendent Central Jail, Patiala (respondent No. 2) shall send fresh recommendation for temporary release of the petitioner to the District Magistrate, Partapgarh (respondent No. 3) along with a copy of this order for necessary action and compliance.

(S.S. SARON)
JUDGE

January 05, 2016
Poonam (II)

(GURMIT RAM)
JUDGE

Note: Whether to be referred to reporter : Yes