

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

Criminal Writ Petition No. 1226 of 2016 (O&M)

Date of decision : October 07, 2016

Harinder Singh @ Bhura

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. K.P.S. Virk, Advocate
for the petitioner.

Mr. Surender Singh Pannu, DAG, Haryana.

S.S. SARON, J.

Learned counsel for the State has filed reply by way of an affidavit of Sh. Sher Singh, Superintendent of Prison, District Prison, Karnal on behalf of respondents No. 1 and 2. The same is taken on record.

Heard learned counsel for the parties.

The petitioner prays for his temporary release on parole in terms of Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') for a period of four weeks to harvest his crop.

The petitioner has been convicted by the learned Special

Court, Karnal for the offence punishable under Section 15 of the NDPS Act. He has been sentenced to undergo rigorous imprisonment for 14 years, besides, pay a fine of Rs.1,50,000/-. At present, he is undergoing his imprisonment.

It is stated that the petitioner has 3 acres of agricultural land at village Gamdi Nadana, PS Tarori, District Karnal. The petitioner has sown paddy crop, which is now ready for harvesting in the next 10/15 days.

Notice of motion was issued in this case.

In terms of the reply that has been filed, it is submitted that the petitioner has also been convicted by the learned Additional Sessions Judge, Karnal vide order dated 08.02.2010 in case FIR No. 169 dated 12.09.2007 registered at Police Station Taraori, District Karnal for the offence punishable under Section 15 NDPS Act. In the said case, he has been sentenced to undergo imprisonment for a period of 14 years. It is further submitted that the petitioner has also been convicted by the learned Additional Sessions Judge, Karnal vide order dated 03.10.2008 in case FIR No. 133 dated 02.04.2006 registered at Police Station Sadar Karnal for the offence punishable under Section 15 NDPS Act. He has been sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of Rs. 2,500/-. The petitioner was released on bail in the said case by the Hon'ble Supreme Court of India. The petitioner, it is submitted, has also been convicted by the learned Additional Sessions Judge, Karnal in case FIR No. 103 dated dated 03.06.2009 registered at Police Station Taraori, District Karnal for the offence punishable

under Section 15 NDPS Act. He was sentenced to undergo three years imprisonment. The petitioner was released on bail in the said case on 04.05.2010 in compliance of the order passed by this Court on 12.12.2009.

It is submitted that the parole of the petitioner was initiated by the Superintendent, District Jail, Karnal and forwarded to the District Magistrate, Karnal for necessary verification and recommendation. The Commissioner, Rohtak Division, Rohtak, who is the competent authority is to consider the case to whom the case was sent for consideration vide letter dated 31.05.2016. The District Magistrate, Karnal conducted an inquiry through the Superintendent of Police, Karnal. The report of the Superintendent of Police, Karnal is to the effect that the petitioner possesses three acres of land, besides he has two sons, who can cultivate the same. It is also submitted that the petitioner is of a criminal nature and he may indulge in selling narcotics if released on parole. The District Magistrate, Karnal vide memo dated 04.07.2006 (Annexure R-1) sent a specific report to the Commissioner, Rohtak Division, Rohtak agreeing with the report of the Superintendent of Police, Karnal. The Commissioner in the circumstances rejected the parole case of the petitioner vide order dated 01.08.2016 (Annexure P-1).

A perusal of the order dated 25.07.2016/01.08.2016 (Annexure P-1) shows that it has been mentioned by the Commissioner, Rohtak Division, Rohtak that the petitioner is a criminal kind of a person and he may indulge in the business of selling intoxicants after his release on parole.

Learned counsel for the petitioner has, however, submitted a chart (Annexure P-2), which indicates that the petitioner has been released on parole on 13 occasions from 10.03.2010 till 08.04.2016 and there has been no complaint on the said occasions of his indulging in any activity of selling narcotics. Even otherwise, it is to be noticed that in terms of Section 6 of the Act, a prisoner is not entitled to be released under the Act if, on the report of the District Magistrate, 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 the maintenance of public order or cause reasonable breach of peace. By merely mentioning that the petitioner is a criminal type of a person, it cannot be said that the security of the State is in danger or the maintenance of public order is apprehended or there is any apprehension of breach of peace. Therefore, the reasons for declining the parole in the facts and circumstances of the case are unsustainable.

In the circumstances, the order dated 25.07.2016/01.08.2016 (Annexure P-1) is set aside and quashed and the petitioner shall be granted four weeks parole subject to his furnishing bail bond and surety to the satisfaction of the District Magistrate, Karnal.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

October 07, 2016
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