

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

CRWP No.1077 of 2016 (O&M)

Date of Decision : 15.05.2017.

Baljit Singh

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Ms. B.P.K.Brar, Advocate
for the petitioner.

Ms. Ritu Punj, Addl.AG., Punjab.

S.S.Saron, J.

On the last date of hearing fresh notice was issued to Sub Divisional Magistrate, Rajouri Garden, Delhi (respondent no.2). Notice was given *dasti*. Learned counsel for the petitioner has submitted the *dasti* notice showing that the same has been served. It is submitted that a copy of the order dated 08.05.2017 passed by this Court wherein a responsible official of the office of Sub Divisional Magistrate, Rajouri Garden, Delhi (respondent no.2) was asked to be present in Court along with the records of the case, was also served. However, no one has appeared for the Sub Divisional Magistrate, Rajouri Garden, Delhi (respondent no.2). Therefore, he is proceeded against *ex parte*.

Heard learned counsel for the parties.

Criminal writ petition has been filed by the petitioner for releasing him on parole in pursuance of the order dated 07.04.2016 (Annexure P-1) passed by the office of Sub Divisional Magistrate, Rajouri

Garden, Delhi (respondent no.2). In terms of the said order, the Sub Divisional Magistrate, Rajouri Garden (respondent no.2) ordered that Baljit Singh (petitioner) may be released on parole subject to conditions as mentioned therein. Despite the said order dated 07.04.2016 (Annexure P-1), it is submitted that the petitioner has not been released. Therefore, he has filed the present petition.

Notice of motion has been issued.

Two sets of replies have been filed on behalf of State of Punjab through the Director General of Police, Jail Department, Punjab Chandigarh and Superintendent, Central Jail, Patiala (respondents no.1 and 3 respectively). Initially, reply by way of affidavit dated 12.09.2016 of Sh. Gurcharan Singh Dhaliwal, PPS, Deputy Superintendent, Central Jail, Patiala on behalf of respondents no.1 and 3 was filed. Thereafter, another reply by way of short affidavit dated 06.03.2017 has been filed by Sh. Manjeet Singh Sidhu, PPS, Deputy Superintendent, Central Jail, Patiala also on behalf of respondents no.1 and 3.

In terms of the initial reply dated 12.09.2016 filed by Sh. Gurcharan Singh Dhaliwal, Deputy Superintendent, Central Jail, Patiala, it is inter alia mentioned that the petitioner was admitted on his transfer from Central Jail, Amritsar in Central Jail, Patiala as a convict in case FIR No.5 of 2010 registered at Police Station S.S.O.C. Amritsar for the offences under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' - for short) as also under Sections 411, 467, 468 and 471 Indian Penal Code ('IPC' - for short). He was convicted and sentenced by the learned Additional Sessions Judge, Amritsar to undergo rigorous imprisonment for twenty years; besides, pay a fine of Rs.2 lacs and in

default thereof undergo simple imprisonment for two years for the offence under Section 21 NDPS Act. He was also sentenced to rigorous imprisonment for varying terms and pay a fine; besides, undergo imprisonment in default of payment of fine for the offences under Sections 411, 467, 468 and 471 IPC. All the sentences were ordered to run concurrently. CRA No.D-515-DB of 2012 against the said conviction and sentence is pending in this Court.

The petitioner made a request for grant of four weeks parole under Sections 3 and 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962 ('Act'-for short). Section 3 of the Act requires a report from the concerned District Magistrate, so that further action may be taken by the Jail Authorities. The Superintendent, Central Jail, Patiala vide letter no. 13613 dated 15.10.2015 sent the parole application of the petitioner to the District Magistrate, New Delhi as per the address given in the Panchayatnama. A request was made to conduct verification in the terms of the judgment passed by this Court in Criminal Misc. No. 34013 of 2009, decided on 26.04.2010. The order passed in the said case requires that verification report on an application for parole of the convict should be considered by the District Magistrate within 21 days. Further, the report should 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. It was requested that specific report of the convict (petitioner) may be forwarded to the Additional Director General of Police (Prisons) Punjab, Chandigarh and the Office of Superintendent Jail, Patiala be also intimated. Thereafter, reminders dated 23.11.2015 and 07.01.2016 were sent requesting the District Magistrate, New Delhi that necessary specific

report of the convict may be forwarded to the Additional Director General of Police (Prisons), Punjab, Chandigarh.

The Sub Divisional Magistrate, Rajouri Garden, Delhi (respondent no.2) sent the verification report to the Additional Director General of Police (Prisons), Punjab, Chandigarh with a copy to the Superintendent, Central Jail, Patiala. In terms of the said report, it was mentioned that the petitioner may be released on parole subject to the conditions as mentioned therein. Besides, the letter was issued with the approval of District Magistrate (West).

The Superintendent, Central Jail, Patiala, vide letter dated 23.05.2016 requested the District Magistrate, New Delhi that a specific verification report of the above said convict (petitioner) was to be forwarded to the Additional Director General of Police (Prisons), Punjab, Chandigarh in the first instance. Then, after considering the specific report, the Additional Director of Police (Prisons), Punjab, Chandigarh was to issue the parole warrant in respect of the petitioner to release him on his personal bond and surety to the office of the Sub Divisional Magistrate, Rajouri Garden, Delhi. Thereafter, the office of Sub Divisional Magistrate, Rajouri Garden, Delhi was to issue the release warrant.

The Sub Divisional Magistrate, Rajouri Garden, Delhi vide letter dated 31.05.2016 sent a copy of the police verification report dated 16.03.2016 of Police Station Hari Nagar. In the said report, it is mentioned that the petitioner is a convicted criminal and parole may not be granted as he may jump parole.

The Superintendent, Central Jail, Patiala then vide letters dated 06.06.2016 and 25.07.2016 again requested the District Magistrate,

New Delhi that the office of Superintendent, Central Jail, Patiala had received verification report of the convict (petitioner) from his office with respect to the verification done by the SHO, Police Station, Hari Nagar, New Delhi. The said report as per rules, it was mentioned was not valid as the report was to be sent by the District Magistrate, New Delhi with specific recommendation for the grant of parole. This was to be sent directly to the Additional Director General of Police (Prison), Punjab with intimation to the office of Superintendent Jail, Patiala.

The Additional Director General of Police (Prisons), Punjab, Chandigarh, in terms of letter dated 07.09.2016 requested the District Magistrate (West), New Delhi to send a specific report with his recommendation whether parole is to be granted or not to the petitioner. It was mentioned that this was being asked for in view of contradicting reports of Sub Divisional Magistrate, Delhi and the Delhi Police

In terms of the second reply which has been filed by Mr. Manjeet Singh Sidhu, Deputy Superintendent, Central Jail, Patiala, the above facts have been recounted. It is further mentioned that this Court on 31.01.2017 had in its order passed in the present petition observed that there were contradictory reports of the Sub Divisional Magistrate, Rajouri Garden, Delhi. The learned Counsel for the State had taken time to verify the position. In compliance to the order dated 31.01.2017 passed by this Court, the Superintendent Central Jail, Patiala had sent a jail official to the office of Sub Divisional Magistrate, Rajouri Garden Delhi with letters dated 20.02.2016 and 01.03.2017 requesting the latter to issue specific police report with recommendation to release or not release the above said convict (petitioner) on parole. The Sub Divisional Magistrate, Rajouri

Garden, Delhi vide letter dated 02.03.2017 sent the police verification report in respect of convict Baljit Singh (petitioner) to the Additional Director General of Police (Prisons) under intimation to the office of Superintendent Central Jail, Patiala with the prior approval of the District Magistrate (West) along with police report dated 27.02.2017 signed by ASI Surinder Dutt, Police Station Hari Nagar in which it is mentioned that the presence of the petitioner in the area would be unwarranted for the society and may cause law and order disturbance in the area.

The Additional Director General of Police (Prisons), Punjab thereafter vide order dated 03.03.2017 (Annexure R-2) rejected the case of the petitioner for grant of parole to him.

It is to be noticed that the reason for declining parole to the petitioner is that in one report, it is mentioned by the Sub Divisional Magistrate, Delhi that the petitioner may jump parole and in the second report, it is mentioned that his presence in the area is unwarranted for the society and may cause law and order disturbance in the area.

In-fact, the Additional Director General of Police (Prison), Punjab, Chandigarh while asking for the report from the District Magistrate, Rajouri Garden, Delhi had referred to a decision of this Court in CRM-M-34013 of 2009, decided on 26.04.2010, wherein it has been mentioned that the verification report on 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 of release of the convict who is likely to endanger the security of the State or the maintenance of Public Order. There is no communication from the Sub Divisional Magistrate, Rajouri Garden, Delhi or from the District Magistrate (West), New Delhi

which mentions that the release of the petitioner on parole is likely to endanger the security of the State or the maintenance of the Public Order. The reports rather shows that the petitioner is likely to jump parole and his presence in the areas is unwarranted for the society and may cause law and order disturbance in the area.

The ground for declining temporary release on parole have been delineated in Section 6 of the Act, which reads as follows:-

“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 -

(1) 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

(2) 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.”

A perusal of sub section (2) of Section 6 of the Act shows that notwithstanding anything contained in Section 3 and 4 of the Act, no

prisoner is 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. Therefore, temporary release on parole of a prisoner may be declined on the ground that the release of the prisoner would endanger the security of the State or affect the maintenance of public order.

The threat to security of the State is to be understood as an act which 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 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 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 reports that have been furnished as already noticed, do not suggest that in the event of temporary release of the petitioner on parole, the security of the State or the maintenance of Public Order would be endangered. All that has been mentioned is that he may jump parole in one report and that his presence in the area is unwarranted for the society and it may cause disturbance of law and order in the area. The question of jumping of parole can be secured by asking for heavy surety. Besides, disturbance of law and order as distinguished from endanger to the security of State and maintenance of public order are entirely different.

In the circumstances, the order dated 03.03.2017 (Annexure R-2) passed by the Additional Director General of Police (Prisons), Punjab, Chandigarh is not sustainable and is liable to be quashed. Accordingly, the said order dated 03.03.2017 (Annexure R-2) passed by the Additional Director General of Police (Prisons), Punjab is set aside and quashed.

The Additional Director General of Police (Prisons), Punjab, Chandigarh shall reconsider the case of the petitioner for his temporary release in accordance with law as expeditiously as possible and preferably within six weeks from the receipt of copy of the order. The process of reconsideration shall be undertaken by the Additional Director General of Police (Prisons), Punjab on the basis of material available on record.

Learned Counsel appearing for the petitioner submits that the petitioner had submitted bail bonds before the Sub Divisional Magistrate, Rajouri Garden, Delhi (respondent No.2) which are liable to be returned and cancelled.

In the circumstances, the bail bonds stated to have been furnished by the petitioner to the tune of Rs.2.00 lacs in the form of fixed deposit FD no. CIF No. 80190443469 of State Bank of India before the Sub Divisional Magistrate, Rajouri Garden (respondent no.2), shall be released in favour of the petitioner.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

May 15, 2017

s.khan

Note

Whether speaking/reasoned : Yes

Whether Reportable : Yes