

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

203

Criminal Writ Petition No.706 of 2016
Date of Decision: October 31st, 2017

Jassa Singh alias Jassa

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. S.S. Mann, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

M.M.S. BEDI, J. (ORAL)

The petitioner is aggrieved by order dated 05.04.2016 (Annexure P-1) by virtue of which the claim of the petitioner has been rejected for grant of parole by making general observations to the effect that the prisoners applying for agriculture parole convicted under NDPS Act, if released, again join the business of smuggling and create threat to the security of the country and there is no guarantee that the petitioner will not commit any offence when released on parole. His release on parole has also been presumed to be threat to the security of the State and public order. The order of District Magistrate, Amritsar, is based upon the report Annexure P-2 of Senior Superintendent of Police, Amritsar (Rural). Copy of the report of Senior Superintendent of Police, Amritsar (Rural), appended as Annexure P-2, also contains the generalised allegations to the effect that prisoners who are convicted under NDPS Act, when released on parole, again indulge in smuggling business.

A similar question came up before a Division Bench of this Court in CRWP No.1090 of 2015 filed by the petitioner. Vide order dated

22.01.2016 passed in the aforesaid writ petition, it was observed that 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. The order dated 12.05.2015 passed by District Magistrate, Amritsar, was set aside in the aforesaid writ petition and matter was ordered to be reconsidered by the District Magistrate afresh. Fresh order has been passed by forming an opinion verbatim the earlier opinion without even considering the panchayatnama signed by members of the Panchayat and Sarpanch to the effect that the parents of the petitioner have died and his wife along with two small children is alone and the petitioner used to do the agriculture work on his land. An assurance has been given by the Panchayat that there was no chance of breach of peace.

Vide order dated 13.09.2017, a direction was issued that the Senior Superintendent of Police, Amritsar (Rural), will furnish the report whether there is any material for arriving at a conclusion regarding apprehension that in case petitioner is released on parole, there will be threat to the security of the State and public order and that it will be impossible for the police to curtail him from indulging in narcotic and psychotropic substances.

Despite two opportunities, no such report has been submitted.

We have taken into consideration all the above said circumstances and made an attempt to strike the balance between the assurance given on one side by the members of the Panchayat regarding the conduct of the petitioner and the apprehensions of the State without any basis and have arrived at the conclusion that it is the obligation of the State to curtail crime by strict vigilance and supervision, especially over the persons who are likely to indulge in any activity under NDPS Act but since despite giving opportunity, no material has been placed on record on the basis of which the opinion had been formed regarding the petitioner indulging in smuggling activities of the narcotics etc., we do not find any basis to rely upon the generalised apprehensions. The order dated 05.04.2016 (Annexure P-1) is thus liable to be set aside as it is verbatim the same order as the order dated 12.05.2015 which was earlier set aside by this Court in the writ petition earlier filed by the petitioner.

The writ petition is allowed. Impugned order dated 05.04.2016 is set aside. The petitioner would be entitled to grant of parole as per his statutory right as the apprehensions of the State are vague and without any foundation. However, in the interest of justice, taking into consideration the apprehensions of the State also, we deem it appropriate to grant concession of parole to the petitioner subject to a condition that he would furnish an undertaking and surety to the effect that he will not indulge in similar activities for which he has been convicted and facing sentence and in case of any such eventuality, the permission regarding parole would cease to exist, the moment the petitioner indulges in any such activity. It will always be open to the State authorities to have constant vigil on the conduct of the

petitioner regarding his maintaining good behaviour and any threat to the security of the country.

The parole will be granted to the petitioner within a period of one month and it will be conditional as ordered hereinabove.

(M.M.S. BEDI)
JUDGE

October 31st, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No