

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

(209)

CRWP-874-2017

Decided on: November 09, 2017.

Happy Kumar @ Happy

.... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Anterpreet Singh, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

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

The instant petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C has been filed by convict Happy Kumar @ Happy claiming temporary parole for the period of six weeks to meet his old parents along with Panchayatnama of Gram Panchayat of village Sarhal Qajian, Block Aur, District SBS Nagar, (Punjab).

The petition has been opposed by the State by filing the affidavit of Superintendent, Central Jail, Ludhiana, on the basis of report Annexure R-2.

On 27.10.2017, the following order was passed:

“Through instant petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C., the petitioner prays for a direction to release him on temporary parole for six weeks under Section 3 (1) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, to enable him to meet his family members. The petition is supported by Panchayatnama signed by members of the Panchayat of Village Sarhal Qadian.

In the reply filed, reliance has been placed on

the report of the local police to the effect that in case the petitioner is released on parole, chances are that he would indulge in the business of drugs and can spoil the future of the youngsters. There is also threat to the breach of peace.

With the assistance of State counsel, we have carefully gone through the report of Deputy Commissioner, S.B.S. Nagar, in which the report of local police dated 13.04.2017 has been relied upon. We have also perused the report of Senior Superintendent of Police, S.B.S. Nagar, dated 13.04.2017 which does not indicate the basis for arriving at the conclusion that in case the petitioner is granted concession of parole, he would go to his village and would indulge in the business of intoxicating substances and could spoil the future of the youngsters and could commit the breach of peace.

On the asking of the Court, it has been informed that the petitioner is not involved in any other case under NDPS Act except the one in which he has been convicted.

The report dated 13.04.2017 appears to have been submitted without carefully considering the basis for arriving at the conclusion mentioned therein.

In view of the report pertaining to the character of the petitioner on the basis of the opinion of the villagers and Gram Panchayat (Annexure P-2), we deem it appropriate, in the interest of justice, to require the Senior Superintendent of Police, S.B.S. Nagar, to redetermine the circumstances by holding a discreet inquiry from the locality where the petitioner has to stay and meet his family members regarding probability of apprehension of breach of peace or his indulging in activities which could be said to have a prejudicial effect on the future of the youngsters. It will not be necessary for the Senior Superintendent of Police to disclose the detailed reasons in the report submitted to this Court, however, in case need be, the record may be kept available for perusal of the Court.

For awaiting the fresh report of Senior Superintendent of Police, S.B.S. Nagar, and that of Deputy Commissioner of the area, adjourned to 09.11.2017".

Pursuant to the above said order, the Senior Superintendent of Police, SBS Nagar has submitted the following report:

“ 2. That it is most respectfully submitted that in pursuance of the order of this Hon'ble Court the Deputy Superintendent of Police, Sub-Division Banga was directed to conduct a thorough inquiry by associating the villagers and family members of the petitioner and to report regarding the circumstances and probability of apprehension of any breach of peace or his indulging in activities which could be detrimental to the youngsters. It is further submitted that the Deputy Superintendent of Police, Sub-Division Banga carried out a thorough inquiry and recorded statements of villagers and also secretly inquired the matter in the area and gave its report to the effect that though the inhabitants of the village are reluctant to come in open to get their statement recorded against the petitioner as they are under fear of the petitioner and his brother namely Jaswinder Kumar @ Shinda who is on bail, but they are against the release of petitioner on parole.

3. That it is most respectfully submitted that from the inquiry carried out by Deputy Superintendent of Police, Sub-Division Banga, it has been discovered that there is very likelihood of breach of peace in the locality and around and the petitioner can indulge in drugs peddling and he would also indulge the youngsters of the village and vicinity if he would be allowed to release on parole, however, the family members of the petitioner are ready to abide by any order and are prepare to face any restriction to get him release on parole”.

We have considered the affidavit of the Senior Superintendent of Police, SBS Nagar in order to determine if there is sufficient material

available with the local police to form a firm opinion that the petitioner would indulge in the business of intoxicating substances and would spoil the future of youngsters and would commit acts of breach of peace.

The petitioner has relied upon the certificate of the village Panchayat whereas the State authorities rely upon the statements of the villagers secretly recorded as they were reluctant to come in open to get their statements recorded against the petitioner as they are under fear of the petitioner and his brother Jaswinder Kumar @ Shinda, who is on bail, but the villagers are against the release of the petitioner in parole.

We are not satisfied with the fact that the State authorities are incapable of controlling the activities of the petitioner in case he is released on parole for a short period of some weeks.

Denial of release on parole, at this stage, will not only be contrary to the reformatory objective of the parole but would be indicative of the weakness of the State authorities to control the activities of the petitioner.

We have been informed that in order to control such activities, the State Government has constituted a Special Task Force for suppression of drug menace and its trafficking under the supervision of a high ranked police officer.

The petitioner being eligible, as per the rules, for release on parole, there being no other case against him and the apprehension of the State authorities being capable of being managed, we deem it appropriate, in the interest of justice, to permit the petitioner to be released on parole for a period of three weeks on trial basis subject to the condition that he would not leave the area of village Sarhal Kajian, Block Aur, District SBS Nagar

without intimation to the SHO of concerned police station and during period of parole, his movements will be under the able supervision of the Sarpanch who has signed Panchayatnama Annexure P-2 and would be under the strict vigilance of Special Task Force constituted by the State.

The petition is disposed of with the aforesaid observations.

It is made clear that in case of petitioner indulging in any illegality under the NDPS Act, it will be open to the State authorities to proceed against him in accordance with procedure of law.

(M.M.S. BEDI)
JUDGE

November 09, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No