

C.W.P. No. 1673 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1673 of 2018

DATE OF DECISION:14.03.2018

Harpal Singh @ Rinka

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjeev Sharma, Advocate
for the petitioner.

Mr. Aditya Sharda, AAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of directions to the respondents to grant six weeks parole to the petitioner to meet his family members under Section 3 (1) (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as 'the Act').

FIR No. 17 dated 25.10.2012 under Section 21/25/29 of NDPS Act and Sections 489-A, B,C/420/120-B IPC at Police Station SSOC, Amritsar was registered against the petitioner. He was convicted and sentenced to undergo RI for 12 years with fine vide judgment dated 3.11.2014 passed by Additional Sessions Judge, Amritsar. Aggrieved by aforesaid judgment of conviction and order of sentence, the petitioner filed an appeal before this Court, which is still pending after admission vide order dated 12.12.2014. A written request was made by the petitioner for grant of six weeks parole to meet his family members on the ground that his

the wife is there to look after them.

Learned counsel for the petitioner contends that claim of the petitioner has been rejected on the basis of report of SP (D) Amritsar. Learned counsel further contends that co-accused of the petitioner, namely, Jassa Singh @ Jassa also approached this Court by way of filing CRWP No. 706 of 2016 for grant of parole, which was allowed vide order dated 31.10.2017.

In response to notice of motion, reply has been filed, which is on record.

Learned State counsel on the basis of reply has opposed the submissions made by learned counsel for the petitioner. He submits that earlier also the petitioner applied for parole for repair of his house and his case was initiated to the District Magistrate, Amritsar vide letter dated 4.3.2015 for report and recommendation. However, the District Magistrate, Amritsar vide letter dated 7.5.2015 reported to Superintendent, Central Jail, Amritsar that the petitioner may indulge in drug supply by making contacts with bad elements in case he is granted parole. On the basis of report of District Magistrate, Amritsar, the case of the petitioner for grant of parole was rejected. Aggrieved by said order, the petitioner filed Criminal Writ Petition No. 1265 of 2015, which was dismissed as withdrawn vide order dated 22.1.2016. Again the petitioner submitted his panchayatnama for grant of parole to meet his family members in the year 2016 and his case was recommended and initiated to District Magistrate, Amritsar for report and recommendation and ultimately the same was rejected vide order dated 23.5.2016 on the ground that the details mentioned in the panchayatnama submitted by the petitioner for parole were not found to be correct.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, co-accused of the petitioner, namely, Jassa Singh @ Jassa approached this Court by way of filing Crl. W.P. No. 706 of 2016 for grant of parole, which was allowed vide order dated 31.10.2017. The relevant portion of order dated 31.10.2017 is reproduced as under:-

“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.”

A perusal of documents available on the file including the report of the District Magistrate, Amritsar and the reply filed by respondent-State, it is clear that nowhere, it has been mentioned as to how threat is there to the State Security and to the Maintenance of Public Order in case the petitioner is released on parole. Even a single reason has not been mentioned while declining parole to the petitioner. The petitioner has not committed any jail offence and has also not misused the concession of bail during pendency of the trial proceedings. The conduct of a prisoner is relevant while granting concession of parole. No material has been placed on record on the basis of which an opinion can be formed that the petitioner may indulge in activities of Narcotics etc.

Similar question came up for hearing before the Division Bench

of this Court in **Bansi Lal Vs. State of Punjab and others** 2016 (4) RCR (Criminal) 1017, wherein, it has been held as under:-

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.

Similar view was taken by this Court in case **Lekh Singh Vs. State of Punjab and another** 2011 (22) RCR (Criminal) 837.

Accordingly, the present petition is allowed and the petitioner is held entitled for grant of parole for a period of two weeks from the date of his release by the jail authorities subject to furnishing an undertaking to the effect that he will not indulge in similar activities for which he has been convicted and undergoing sentence as well as surety to the satisfaction of Superintendent, Central Jail, Amritsar. The petitioner is directed to surrender before the jail authorities on expiry of period of parole.

March 14, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes