

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

Civil Writ Petition No.5183 of 2018

Date of Decision: 07.03.2018

Sukhjinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Naveen Bawa, Advocate
for the petitioner.
Mr. Aditya Sharda, A.A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioner-Sukhjinder Singh was convicted and sentenced vide judgment dated 21.12.2016 passed by the Additional Sessions Judge, Chandigarh, in case, FIR No.33 dated 18.01.2014 registered at Police Station Sector 39, Chandigarh. He is undergoing sentence after the judgment of the trial Court.

The present petition has been filed by the petitioner for grant of parole for two days under Section 3(1)(c) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 to attend the marriage of his brother, which is going to take place on 06/07.03.2018.

Learned counsel for the petitioner submits that the petitioner being brother has to perform certain ceremonies on the occasion of marriage and as such, his presence is required. Learned counsel also submits that the petitioner has undergone approximately 29 months of sentence in total i.e 14 months during trial and 15 months after conviction. The conduct of the petitioner during custody period remained good and satisfactory as there was no complaint against

him of any misconduct in the jail premises. Learned counsel also submits that the petitioner has not availed any concession of parole. The representation moved by the petitioner for releasing him on parole has not been considered and he has not been granted parole. Petitioner undertakes to abide by all the terms and conditions to be imposed by this Court or by the jail authorities and to surrender well in time.

In response to notice of motion to the respondents-State, reply by way of an affidavit of Superintendent, Central Jail, Amritsar has been filed, wherein, it has been stated that six more cases are pending against the petitioner. The details of those six cases has also been mentioned in the affidavit. It has also been mentioned in the reply that the petitioner has link with many criminal gangsters and he can abscond, in case, he is released on parole. There is a threat to the State security and maintenance of Public order. A report dated 04.03.2018 of Senior Superintendent of Police, Amritsar Rural is also annexed with the reply.

Learned State counsel was also directed to file an affidavit explaining therein as to how there is an apprehension that the petitioner may misuse the concession of parole or there is a likelihood that he may run away from the custody. A custody certificate has been filed with the affidavit, wherein, the detail of all cases; factum of stage of the cases and also as to whether the petitioner is on bail in those cases or not, has been mentioned. It has also been mentioned in the affidavit that number of cases of murder, dacoity and kidnapping have been registered against the petitioner. He was found to have mobile in jail having whatsapp service on a foreign SIM card. It has been mentioned that as per report of Director General of Police, Intelligence, Punjab S.A.S. Nagar, the petitioner

has been talking with different travel agents and there is a likelihood that he may abscond.

Heard the arguments of learned counsel for the petitioner as well as learned counsel for the respondents-State.

The reason for not releasing the petitioner on parole has been stated that as per adverse report, there is a likelihood that he may abscond, in case, he is released on parole. No doubt, adverse police report is based upon the registration of six cases against the petitioner. The concerned authorities are the best Judge of the situation and for that, the petitioner's antecedents and record is relevant. In case, such an opinion has been formed by the concerned authorities, the same cannot be interfered with in the writ jurisdiction. In case, another view is possible, the Court cannot substitute the subjective satisfaction of the competent authority by the judgment of the Court or opinion. More so, it cannot be said to be arbitrary, unreasonable and mala fide. It is well settled that the nature of the offences committed, for consideration of furlough/parole, is germane and relevant factor. The maintenance of peace or good behaviour and conduct is necessary as the crime may affect the society and the same is prejudicial to the interest of public peace. In case of heinous crime, one cannot ignore that if the conviction is for offences like kidnapping, smuggling, dacoity, robbery, then, release of such prisoners on parole/furlough should be considered which are detrimental to public peace and order.

The remission and parole are not vested rights of the prisoners. In fact, they are privileges granted by the State to the convicted prisoners. Therefore, a convicted prisoner cannot claim these two privileges as his vested rights. There is a difference between right and privilege. Rights are

classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by a Statute. On the other hand, a privilege is granted by the State under certain conditions and privilege by their very nature can equally be taken away by the State. Whereas rights are universal in nature, privileges can be given to certain specific groups and need not necessarily be universal. Remission and parole are part of the reformatory theory of punishment. Since they are privileges granted by the State, it is not necessary that all the convicted prisoners must have the privilege extended to them. Certain categories of prisoners can be refused these privileges. In case the refusal is based on intelligent differentia and has a nexus to the object of the Rules, the refusal is not violative of Article 14 of the Constitution of India. Accordingly, the privilege can be denied under the law. In such a manner, it cannot be violative of Article 21 of the Constitution of India. The personal liberty can be curtailed by judicial order under a procedure established by law.

Accordingly, by considering the nature of offence and serious threat as a whole, the convict can be deprived of such privilege. Moreover, the *parole* cannot be claimed as a matter of right. It can be denied/declined without sufficient cause.

In view of the facts as mentioned above, the petitioner cannot be released on *parole* and as such, the present petition, being devoid of any merit, is hereby, dismissed.

(DAYA CHAUDHARY)
JUDGE

07.03.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No