

CWP No.8036 of 2018

[1]

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

CWP No.8036 of 2018
Date of decision: April 25.2018

Sumit Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rishu Mahajan, Advocate,
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner is presently lodged in Central Jail, Amritsar. He was convicted and sentenced for 10 years RI and fine of ₹1,05,000/- in a case registered vide FIR No.34 dated 30.09.2013, under Sections 21 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") at Police Station Airport, Amritsar by the Special Judge, Amritsar. The petitioner made an application for grant of parole for 6 weeks to meet his family members. His case was sent to the District Magistrate on 18.05.2017. The District Magistrate has reported to the Superintendent of Jail, Amritsar, vide letter dated 18.10.2017, that as per the report of the Assistant Commissioner of Police, Amritsar South, the petitioner cannot be released on parole because he would again indulge in the trade of drug smuggling and would be a threat to the State security and maintenance of public order.

Counsel for the petitioner has submitted that in the meantime, the

marriage of his brother has also been fixed, which is scheduled to be held on 29.04.2018. In this regard, counsel for the respondents has replied that neither the petitioner had ever informed them about the marriage of his own brother nor made any written request for grant of parole for the said purpose.

Counsel for the petitioner has submitted that the petitioner is neither involved in any other case nor is a hard core criminal. It is further submitted that the provisions of Section 6(2) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as the “Act”) cannot be applied to the case of the petitioner as his act and conduct would not fall within the purview of “threat to the State security or maintenance of public order”. He has further submitted that by way of a Panchayatnama, responsibility of the petitioner has been taken by the Panchayat of the village that he would not indulge in any illegal work.

In support of his submissions, learned counsel for the petitioner has relied upon various judgments of this Court rendered in the cases of **Bansi Lal vs. State of Punjab and others**, 2016(1) PLJ (Criminal) 55, **Jassa Singh alias Jassa vs. State of Punjab**, Criminal Writ Petition No.706 of 2016, decided on 31.10.2017, **Tarsem Singh vs. State of Punjab and others**, Criminal Writ Petition No.799 of 2017, decided on 24.10.2017 and **Simrandeep Singh vs. State of Punjab and others**, CWP No.2261 of 2018, decided on 17.04.2018.

On the other hand, counsel for the respondents has reiterated the stand taken in the reply that in case the petitioner is released on parole, then there are chances of his indulging in the trade of drug smuggling and there would be a threat to the State security and maintenance of public order.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The petitioner had applied for parole to meet his family members. Section 6(2) of the Act provides a ground for rejection of the application for parole on the basis of the report of the District Magistrate if the State Government or an officer by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order.

In **Bansi Lal's case (supra)**, relied upon by the petitioner, the Court has discussed the terms “Security of the State”, “law and order” and the “public order”. The relevant part of the said order reads 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.”

In the said case, the Superintendent of Jail had reported that the convict in that case may deal in narcotics and jump parole but since the issue regarding “his release on parole would endanger the security of the State or the maintenance of public order” was not shown to have been considered in the decision making process, therefore, the matter was remanded back.

In **Jassa Singh alias Jassa's case (supra)**, the same observations were made by the authorities while rejecting the application of the petitioner in that case that he would again join the business of smuggling and create threat to the security of the country. The Court had issued a direction in the said case to the police to furnish the report about the material for arriving at the conclusion regarding apprehension that the petitioner, after release on parole, would be a threat to the security of the State and the maintenance of public order and when no report was received, the Court had passed the order that a condition can be imposed at the time of granting parole that the convict would not indulge in similar activities for which he has been convicted and facing sentence.

Similar view has been taken in **Tarsem Singh's case (supra)**, in which the convict was also facing sentence for the offences committed under

the NDPS case.

In **Simrandeep Singh's case (supra)**, while referring to the various judgments of this Court rendered in the cases of **Rajmal vs. State of Haryana and ors.**, 1989(1) R.C.R. (Criminal) 95, **Chhaju vs. State of Haryana and anr.**, 1988(1) R.C.R. (Criminal) 38, **Nazir vs. State of Punjab and anr.**, 1987(2) R.C.R. (Criminal) 243, and **Lachhman Dass vs. State of Punjab**, 1988(1) R.C.R. (Criminal) 101, this Court has held that there has to be a positive report with the police to draw a conclusion that the convict's release on parole would endanger the security of the State or the maintenance of public order.

In the present case, except for the apprehension shown by the respondents that the petitioner, having been convicted in a case registered under the NDPS Act, on his being released, would again indulge in the same trade, is not *per se* a case of his causing danger to the security of the State and maintenance of public order especially when the petitioner has not repeated the offence and has been convicted for the said offence for the first time.

Therefore, in my considered opinion, the matter requires reconsideration by the respondents, in the light of the various decisions referred to here-in-above, to record a considered finding about the alleged danger by the petitioner to the security of the State and maintenance of the public order or for his release on parole.

Insofar as the prayer of the petitioner for release on parole for attending the marriage of his brother is concerned, he has not filed any application to the Superintendent of Jail in this regard and has filed the writ petition straightway and the respondents have rightly mentioned in the reply

that the petitioner had neither informed them about the marriage of his brother nor had made any written request for seeking parole for that purpose. Therefore, the said prayer of the petitioner cannot be considered and is hereby rejected.

In view of the aforesaid discussions, the present writ petition is hereby allowed, impugned order dated 18.10.2017 is set aside and the matter is remanded back to the respondents to reconsider the case of the petitioner for the grant of parole in the light of the aforesaid observations made here-in-above, within a period of four weeks from the date of receipt of certified copy of this order.

April 25, 2018
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(Rakesh Kumar Jain)
Judge

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