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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28868-2018 [O&M]

Date of Decision : March 07, 2019

Kulwant Singh alias Laddi

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Nandan Jindal, Advocate,
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab,
for respondent-State.

Mr. A.S. Brar, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Kulwant Singh alias Laddi has filed the present petition under Articles 226/227 of the Constitution of India read with Sections 3(1)(b), (c) and (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 Amended Act, 2015 (for short, "**the Act**") for issuance of a writ of certiorari for quashing impugned order dated 27.08.2018 (Annexure P/3) passed by District Magistrate, Moga, respondent No.3 whereby the request of the petitioner for grant of six weeks parole has been rejected.

2. Facts relevant for the purpose of decision of the present writ petition; that vide judgment of conviction dated 17.05.2017 (Annexure P/1) passed by learned Sessions Judge, Moga, the petitioner was

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convicted under Sections 302, 148 and 149 IPC and 25 of Arms Act and was sentenced to undergo Life Imprisonment in case bearing FIR No. 102 dated 29.10.2012 registered at Police Station Nihal Singh Wala and the appeal filed by the petitioner challenging the said judgment is pending before this Court and stands admitted.

3. Learned counsel for the petitioner contended that the petitioner, who is presently lodged in Central Jail, Faridkot, applied for grant of six weeks parole, but the same was declined by respondent No. 3 vide impugned order dated 27.8.2018 (Annexure P/3) on the ground that the petitioner is having relations with the gangsters and there are chances of his absconding while on parole. Further, it has been mentioned in the order that there is every chance of breach of public order. The aforesaid grounds do not in any way dis-entitle the petitioner to get parole as he is not a "Hardcore prisoner".

4. Learned State counsel contended that on the request of the petitioner, the case of the petitioner was considered by Senior Superintendent of Police and vide his letter dated 14.08.2018 it has been reported that the petitioner is having relations with the gangsters and there are chances of his absconding while on parole. Further, it has been mentioned in the report that there is every chance of breach of public order. On the basis of said report, the request of the petitioner has been declined by respondent No. 3 vide impugned order, Annexure P/3.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that the provisions of the Act provide for the temporary release of prisoners for good conduct on certain conditions as enacted by

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the legislature of the State of Punjab. Temporary release on parole is granted on certain conditions as envisaged in Section 3 of the Act. In terms of Section 5A of the Act, prisoners are not entitled to temporary release in certain cases, like cases where death sentence has been awarded or a prisoner is a 'hardcore prisoner'. 'Hardcore prisoner' has been defined in Section 2(aa) of the Act as follows:-

"(aa) **"hardcore prisoner"** means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;"

6. Further, Section 6(2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is entitled to be released under the Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order. Therefore, the release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the District Magistrate, Moga (respondent No. 3) for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment and is having relations with gangsters and there is apprehension that he may commit a crime on release on parole and there are chances of his absconding and breach of public order.

7. In **Ram Chander Vs. State of Punjab and Ors., 2017 (3)**

R.C.R. (Criminal) 340, Hon`ble Division Bench of this Court observed that

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the likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not to be taken as apprehension of a threat to the security of the State or the maintenance of public order.

8. Identical view was taken by this Court in Varun @ Gullu v. State of Haryana and others, CRM M. No. 34013 of 2009, decided on 26.04.2010, wherein it has been held as under:-

"No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by a statute and on fulfilment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

In the cases, which have come up earlier before this Court as per judgments referred to by the learned counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated under Section 6 of the Act.

We find that the authorities under the Act have been consistently declining the request for parole or furlough only for

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the reason of apprehension of breach of peace, whereas there is no such condition under the Act. This is so inspite of numerous judgments of this Court that apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough”.

9. In view of the above, the impugned order dated 27.8.2018 (Annexure P/3), passed by respondent No. 3, declining the request of the petitioner for grant of six weeks' parole is set-aside as the said order is not supported by any material and is even otherwise unsustainable. Respondent No. 3 shall consider the case of the petitioner *de hors* the said recommendation and pass necessary orders in accordance with law for temporary release of the petitioner on parole, subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behaviour during the period of parole and also surrender in the jail after expiry of his parole.

10. The present writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

March 07, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes