

CWP-26937-2018

[1]

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

**CWP No.26937 of 2018 (O&M)
Date of decision: March 27, 2019**

Sukhwinder Singh

...Petitioner

Vs.

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Ms. Samina Dhir, DAG, Punjab.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the District Magistrate, Amritsar dated 11.4.2017 (Annexure P-2) whereby the application for release of the petitioner on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing imprisonment for twelve years in case FIR No.261 dated 22.9.2014 under Sections 21 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Cantonment, Amritsar after his conviction by the Special Court, Amritsar. His appeal is pending adjudication before this Court.

The petitioner submitted an application to the Superintendent, Central Jail, Amritsar for grant of parole to meet his family members. It was forwarded to the District Magistrate, Amritsar. Upon the receipt of the report of the Deputy Superintendent of Police, Sub Division Attari that the petitioner after his release

may again indulge in smuggling activities, can abscond and that his release may pose danger to security of State and maintenance of public order, the District Magistrate, Amritsar rejected the request for parole.

In the reply filed by Deputy Superintendent of Police, Sub Division Attari, District Amritsar-Rural, the same grounds have been reiterated. It has also been asserted that heavy recovery of contraband 01 kilogram heroin was effected from the petitioner and 6.25 kilograms heroin from his associates.

Learned counsel for the petitioner has argued that the grounds for rejection are baseless. The petitioner is behind bars since 22.9.2014, the day of registration of the FIR. He has undergone imprisonment for a period of more than four years and has not committed any jail offence during this period. There is no other case against the petitioner.

The impugned order declining parole to the petitioner cannot sustain as the grounds mentioned therein are not made out in the facts of this case.

As regards the ground that there would be danger to security of State and maintenance of public order if the petitioner is released all that needs to be said is that no material in support thereof has been brought on record by the respondents. It has been held by a Division Bench of this Court in **Jassa Singh Vs. State of Punjab** 2016(1) Law Herald 587 that for reaching the satisfaction of danger to the security of the State or maintenance of public order there has to be material before the competent authority for arriving at that conclusion. Parole cannot be denied on mere generalization. Accordingly this ground is not made out.

It has been held by Division Bench of this Court in **Ram Chander Vs.**

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

The ground that there is a possibility of the petitioner absconding or involving in other serious crime while released on parole, appears to be a mere apprehension in the mind of the Authority as no material has been referred to justify such apprehension. Temporary Release Acts envisage temporary release of convicts. Mere fact that a person is convicted for an offence does not mean that he will abscond if he is released on parole. As held by a Division Bench of this Court in **Baljit Singh Vs. State of Punjab 2017(2) Law Herald 1796** if the State has any apprehension that the convict will jump parole it can always impose adequate conditions including asking for heavy surety.

In CRWP No.799 of 2017 titled “Tarsem Singh vs. State of Punjab and others” decided on 24.10.2017, an FIR under the NDPS Act was registered against the petitioner (therein) in 2013 and he was convicted and sentenced to undergo RI for 12 years. His request for temporary release on parole was not allowed by the competent Authority taking the similar objections as in the present case. His petition for temporary release was allowed by a Division Bench of this Court. It was observed :

“5. We do not find any substance in the three-fold objections raised by the respondents. Firstly, the meeting with some of the family members in the jail premises for a short duration has no parity with the petitioner staying together with his family members while on parole. There is a mark difference between the two meetings. Secondly, apprehension that the petitioner would abscond, has no factual basis. There are no past instances where the

petitioner attempted to flee from law. The violation of law and order by the petitioner also appears to be a mere apprehension, for there is neither any other case registered against him under the NDPS Act nor under any penal law.”

Accordingly, this petition is allowed. The impugned order is set aside. The respondents are directed to release the petitioner on parole for a period of six weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. Further, in the facts of the case, it may be appropriate to incorporate an additional condition that before his release the petitioner would also furnish an undertaking and surety to the effect that he will not indulge in similar activities for which he has been convicted. 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 maintain constant vigil on the conduct of the petitioner so that he does not indulge in similar illegal activity.

March 27, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No