

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

214

**CRWP-4697-2020
Date of decision: 24.09.2020**

Narinder Singh @ Nindi

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vishal Khatri, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, Asstt. A.G., Punjab
for the respondents.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present petition under Article 226/227 of the Constitution of India for issuance of a writ directing the respondents for release of the petitioner on 8 weeks' parole under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, "the 1962 Act") for looking after his parents and socializing with his family members.

2. Briefly stated, the petition has been filed on the averments that vide judgment dated 18.07.2018 passed by the Judge, Special Court, Amritsar the petitioner was convicted under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") and sentenced to undergo rigorous imprisonment for a period of 6 months and to pay fine of Rs.500/- and in case of default of payment of fine to further undergo rigorous

imprisonment for a period of one week under Section 21 of the NDPS Act and to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- and in case of default of payment of fine to further undergo rigorous imprisonment for a period of 6 months under under Section 22 of the NDPS Act. The petitioner filed appeal-CRA-S-4272-SB-2018 which has been admitted. The petitioner applied in the month of April 2020 for grant of eight weeks parole for socialization and taking care of his old age parents. His application has been rejected by respondent No.3 vide order dated 02.05.2020 on the ground that release of the convict on parole will be dangerous to the security of the State and maintenance of public order. Earlier the petitioner filed CRWP-2237-2020 for grant of parole on the ground of marriage of his daughter on which concession of parole for 4 days was granted by this Court vide order dated 12.03.2020. The petitioner is is not a hard-core prisoner. At the time of hearing of his earlier petition this Court also did not consider the petitioner to be a hard-core criminal. The petitioner has already undergone more than 3 years of actual sentence with post-conviction imprisonment of 1 year and 8 months. The petitioner is involved in two more cases but he is on bail in both the cases. The petitioner has always maintained good conduct in jail and he is not involved in any jail offence. Order dated 02.05.2020 being illegal may be set aside and the petitioner may be ordered to be released on parole.

3. The petition has been contested by the respondents in terms of reply filed by way of affidavit of Shivraj Singh Nandgarh, Superintendent District Jail, Sri Muktsar Sahib. However, in the said

reply it has been admitted that the petitioner has maintained good conduct inside the jail and is not involved in any jail offence.

4. In reply filed by way of affidavit of Harkrishan Singh, PPS, Deputy Superintendent of Police, Baba Bakala Sahib, District Amritsar (Rural) it has been admitted that mother of the petitioner is suffering from Myocardial infection chest pain. She was admitted in the hospital and after treatment her condition is better and she has been discharged on 10.09.2020 with the advice for complete bed rest for long time. However, the petition has been opposed on the ground that the petitioner has three brothers namely Hardev Singh, Major Singh and Paramjit Singh who along with their family members are living in the same village Dhulka. Mother of the petitioner is presently living with her son Paramjit Singh and grandson Gurpreet Singh s/o Hardev Singh. They all are taking care of mother of the petitioner very well. Mother of the petitioner is now taking bed rest at her home and she is being looking after by brother and nephew of the petitioner.

5. I have heard arguments addressed by learned counsel for the petitioner and learned State counsel and gone through the relevant record.

6. Learned counsel for the petitioner has submitted that the mother of the petitioner is suffering from serious ailments and the petitioner wants to attend to his mother and to make necessary arrangements for her medical treatment and to socialize with his family members. The application of the petitioner for parole has been wrongly rejected on the grounds that there is danger to the State security and maintenance of the public order in case of release of the petitioner on

parole. There is no material to substantiate the said grounds of rejection. The order rejecting his application for parole being illegal may be set aside and the petitioner may be ordered to be released on parole for eight weeks. In support of his arguments, learned counsel for the petitioner has placed reliance on the observations in ***Bansi Lal Vs. State of Punjab and others : 2016 (4) RCR (Criminal) 1017; Jugraj Singh @ Bhola Vs. State of Punjab and others : 2010 (25) RCR (Criminal) 138; Sagar Kumar Vs. State of Punjab and others : 2017 (4) RCR (Criminal) 116; CRWP-799-2017 titled as 'Tarsem Singh Vs. State of Punjab and others' decided on 24.10.2017; CWP-16406-2019 titled as 'Gurmit Singh @ Gopi Vs. State of Punjab and others' decided on 25.07.2019; CWP-14543-2019 titled as 'Kuldeep Vs. State of Haryana and others' decided on 29.08.2019; CWP-22861-2018 titled as 'Ram Pal @ Sonu Vs. State of Punjab and others' decided on 07.12.2018; CRWP-2156-2019 titled as 'Jeet Singh Vs. State of Punjab and others' decided on 07.01.2020 and CRWP-2894-2020 titled as 'Sukhjinder Singh @ Bitta Vs. State of Punjab and others' decided on 20.03.2020.***

7. On the other hand, learned State counsel for the respondents has argued that the mother of the petitioner is suffering from myocardial infection chest pain but the petitioner has three brothers namely Hardev Singh, Major Singh and Paramjit Singh who are living with their family members in the same village. Mother of the petitioner is at present living with her son Paramjit Singh and grandson Gurpreet Singh who are taking care of her. The petitioner is not entitled to grant of parole on the ground of illness of his mother. In

case the petitioner is ordered to be released on parole there will be danger to State security and maintenance of public order. Therefore, the petition may be dismissed.

8. On consideration of the submissions made by learned Counsel for the petitioner and learned State Counsel and perusal of the material on record I am of the considered view that the petition deserves to be allowed.

9. In the present case as per the custody certificate the petitioner has undergone actual sentence of 03 years 04 months and 10 days. Admittedly the petitioner maintained good conduct in the jail and is not involved in any jail offence. Mother of the petitioner was suffering from Myocardial infection chest pain. She was admitted in the hospital and was discharged on 10.09.2020 with the advice for complete bed rest for long time.

10. The question which first arises is as to whether the petitioner is entitled to parole on the ground of serious illness of his mother and for socialization with his family members.

11. Section 3 of the 1962 Act, which provides for temporary release of prisoners on certain grounds, reads as under:-

“3. Temporary release of prisoners on certain grounds.- (1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that

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(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is

seriously ill; or

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(d) it is desirable so to do for any other sufficient cause.

Explanation.- The-expression "sufficient cause" includes (1) serious damage to life or property of the member of the family caused by any natural calamity; or (2) critical condition of any member of the family on account of accident; or (3) delivery of child by the wife of the prisoner.

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[(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

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(b) where the prisoner is to be released on the ground specified in clause (aa) or clause (b) or clause (c) or clause (d) of sub-section (1), six weeks;

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12. Section 3(1)(aa) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 permits temporary release of a prisoner on parole on the ground of serious illness of husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner. In ***Kulwant Singh VS. State of Punjab (PHHC): 1987(2) CurLJ (CCR) 438*** parole was allowed on the ground of serious illness of mother.

13. No doubt the petitioner has three brothers and as mentioned in reply filed by way of affidavit of Harkrishan Singh, PPS, Deputy Superintendent of Police, Baba Bakala Sahib, District Amritsar (Rural) at present mother of the petitioner is residing with her son Paramjit Singh and grandson Gurpreet Singh who are taking care of

mother of the petitioner but there is no condition in Section 3(aa) of the 1962 Act that parole under the same can be granted only where the prisoner is the only person to look after such family member seriously ill. Therefore, temporary release on parole cannot be denied to the petitioner on the ground of mere availability of other family members to attend to his mother and making necessary arrangements for her medical treatment.

14. In view of the beneficial nature of the statutory provisions made in the 1962 Act aimed at reformation and rehabilitation of the prisoner, the petitioner will be entitled to grant of parole also for socializing with his family members which will constitute sufficient cause within the meaning of Section 3(1)(d) of the 1962 Act.

15. The question which next arises is as to whether rejection of application of the petitioner for grant of parole on the ground of the same being likely to endanger the security of the State or maintenance of public order is illegal.

16. Section 6 of the 1962 Act provides the cases where consultation with District Magistrate is not necessary or where prisoners are not to be released and the same reads as under :-

“6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released.- Notwithstanding anything contained in sections 3 and 4,-- (i) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and (ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order.”

17. In **Jassa Singh @ Jassa Vs. State of Punjab 2016 (5) RCR**

(Criminal) 522 a Division Bench of this Court observed as under:-

“7. In terms of the above Section 6 (ii) of the Act, a prisoner is not 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 authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order. Temporary release of a prisoner on parole or furlough as the case may be can be denied if his release is likely to endanger the security of the State or the maintenance of public order. For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

18. In **Bansi Lal Versus State of Punjab and others, 2016 (4)**

RCR (Criminal) 1017 a Division Bench of this Court observed as under:-

“15. 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.”

19. In ***Jugraj Singh @ Bhola Vs. State of Punjab and other : 2010 (25) RCR (Criminal) 138*** a Division Bench of this Court observed as under:-

“.....In our opinion, the release of a convict on parole is a wing of reformatory process. Section 3 of the Act has been enacted as a reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined to him.....”

20. Another Division Bench of this Court in ***Ram Chander Vs. State of Punjab and others : 2017(3) RCR (Criminal) 340*** held that mere likelihood of committing crime is not to be taken as an apprehension of a threat to the security of the State or maintenance of public order.

21. In the present case application of the petitioner for grant of parole was rejected on the ground that in case the petitioner is released on parole there will be danger to security of the State and maintenance

of public order but the respondents have not placed on record any material to substantiate these grounds of rejection. Merely reproduction of the language of the statute without any supportive material will not furnish a valid ground for rejection of the application of the petitioner for grant of parole.

22. Section 2(aa) of the 1962 Act which defines hardcore prisoner reads as under:-

“(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.”

23. The petitioner, not having been convicted and sentenced under the above-said penal provisions, does not fall under the definition of hardcore prisoner.

24. Parole cannot be denied to the petitioner on the ground of his involvement in other cases under the NDPS Act and likelihood of the petitioner committing similar offence during the period of parole. Apprehension of the respondents that the petitioner may commit similar offence during the period of parole would be hypothetical and to allay the apprehension, adequate conditions can be imposed upon the petitioner at the time of his release on parole and his conduct can be kept under watch. For judicial precedents in support of this view reference may be made to ***CWP 19340 of 2019 titled Manjit Singh @ Laddu Vs. State of Punjab and others decided on 02.09.2019 and Mohd. Iftkhar @ Kaka Vs. State of Punjab: 2019(2) Law Herald 1156).***

25. In view of the above discussion, the petition is allowed and the impugned order dated 02.05.2020 (Annexure P-3) is hereby quashed. The petitioner is ordered to be released on parole for a period of six weeks from the date of release on furnishing of requisite personal and surety bonds to the satisfaction of the District Magistrate concerned, who is directed to impose such conditions as may be considered necessary to secure the presence of the petitioner in jail after the parole period is over and to ensure that the temporary release is not misused by securing the bond of mandatory good conduct with a clear stipulation that in case the petitioner commits any offence during his period of temporary release, his release warrants would be cancelled as provided in Rule 4 of Punjab Good Conduct Prisoners' (Temporary Release) Rules, 1963.

24.09.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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