

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

CRWP No.1235 of 2019

Date of decision: September 25, 2020

Nana Lal alias Nana Ram

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ranbir Singh Sekhon, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

Ashok Kumar Verma, J.(oral)

The instant petition has been filed seeking quashing of impugned order dated 12.07.2019 (Annexure P-2) and further to release the petitioner-Nana Lal alias Nana Ram on parole for six weeks to meet his family members.

Facts, in brief, are that the petitioner was convicted for 14 years on 07.02.2018 in FIR No.15 dated 11.01.2014 under Section 18/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and has already undergone a total sentence of 03 years 05 months and 27 days including 02 years 07 months and 16 days after conviction. He has not committed any jail offence during his custody. His parole has been rejected without any basis in an arbitrary manner. The Gram Panchayat of his village has strongly recommended the parole of the petitioner. In the letter dated 16.10.2018, issued by Sarpanch, Gram Panchayat Rakoda Janpat Panchayat, Mandsaur it has been stated that petitioner Nand Lal son of Basanti Lal Rathore, resident

of village Rakoda, Police Station Bhavgarh, District Mandsaur (MP) want to come on parole to meet his family members and there is no danger in the village on his coming on parole. The Gram Panchayat further recommends for his release on parole. But the District Magistrate, Mandsaur, vide impugned order dated 12.07.2019 (Annexure P-2) denied parole of the petitioner.

Upon notice, reply by way of affidavit of Karanjit Singh, Superintendent, Central Jail, Ferozepur on behalf of State of Punjab respondents No.1 to 3 has been filed wherein it has been submitted that parole of the petitioner has been rejected on the sole ground that he may again indulge in smuggling of Narcotics as per the report of Senior Superintendent of Police, Mandsaur dated 4.7.2019, wherein it has been mentioned that the petitioner was involved in smuggling of the Narcotics.

In support of his averments, learned counsel for the petitioner has relied upon the judgment rendered by a Division Bench of this Court in **Jassa Singh @ Jassa Vs. State of Punjab 2016(5) RCR (Criminal) 522** as well as judgment of a Co-ordinate Bench of this Court in **CWP No.19340 of 2019 titled as Manjit Singh @ Laddu Vs. State of Punjab and others, decided on 02.09.2019** and has submitted that mere likelihood of indulging in trade of drugs would not be a sufficient ground to decline temporary release on parole as mere apprehension cannot be considered as threat to the security of the State or maintenance of public order.

Per contra, learned State counsel has submitted that the possibility that petitioner will again engage in selling contraband, cannot be ruled out in case he is released on parole.

Learned counsels for the parties have been heard. Perusal of the impugned order shows that District Magistrate denied the parole to the petitioner solely on the ground that he may again indulge in smuggling of Narcotics and on the basis of apprehension that if he comes out on parole then he will surely engage in selling drugs.

The temporary release of prisoner for good conduct is governed by the Punjab Good Conduct Prisoners (Temporary) Release Act, 1962 (hereinafter referred to as "1962 Act"). The only embargo upon the release of the prisoner is laid down in Section 6 of the 1962 Act, which is reproduced 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".

Section 6 of 1962 Act, came up for consideration before a Division Bench of this Court in Jassa Singh @ Jassa's case (supra). After noticing the provision, the Division Bench held 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.”

The expression 'law and order' and 'public order' came up for interpretation before a Division Bench of this Court in **Bansi Lal Versus State of Punjab and others, 2016 (4) RCR (Criminal) 1017** wherein it was held as under:-

“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.”

Another Division Bench of this Court in **Ram Chander Vs. State of Punjab and others 2017(3) RCR (Criminal) 340** held that 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 be taken as an apprehension of a threat to the security of the State or maintenance of public order.

In **Simrandeep Singh Vs. State of Punjab [CWP No.2261 of 2018]**, decided on 17.04.2018, after review of the case law, this Court held that there has to be material with the respondents for entertaining the apprehension that if the convict is released on parole, he will cause danger to the public peace.

In **Manjit Singh @ Laddu's case (supra)**, after examining the cases in which the petitioner was involved, this Court held that

apprehension of the State that the convict may indulge in selling of intoxicant substance is hypothetical and to allay the apprehension, adequate conditions can be imposed upon him and his conduct can be kept under watch in case parole is granted.

In the backdrop of the case law discussed above, facts of the present case may be examined. There is nothing on record to show that conduct of the petitioner in jail has not been found good. The petitioner has never been released on parole earlier. Moreover, the respondents have not placed on record any material to support the apprehension. Merely on the basis of an apprehension, benefit of parole cannot be denied. The petitioner has sought temporary release on the ground that he has to meet his family members. The claim of the petitioner has been verified by the Sarpanch of his village. Though expression “sufficient cause” as mentioned in Section 3(1)(d) of 1962 Act, has not been defined, but the reasons given by the petitioner for his release on parole will fall within the ambit of “sufficient cause” and therefore, his request is entitled to be accepted.

As a consequence of the above discussion, the writ petition is allowed, the impugned order dated 12.7.2019 (Annexure P-2) is hereby quashed. The petitioner is ordered to be released on parole for a period of six weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be 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 and 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. After his release on completion of his parole period, he shall surrender at the Jail gate at 5.00 P.M.

(ASHOK KUMAR VERMA)
JUDGE

September 25, 2020
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No