

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

**CRWP No.1558 of 2019 (O&M)
Decided on: 07.01.2020**

Lakhbir Singh @ Kheeru

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

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

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this criminal writ petition filed under Article 226/227 of the Constitution of India, is for setting-aside the report dated 15.08.2019 (Annexure P3) and the order dated 23.10.2019 passed by the District Magistrate-cum-Deputy Commissioner vide which the prayer of the petitioner for temporary release on parole for a period of 08 weeks to socialize with his family and to take care of his wife and 03 children as per the provisions of Section 3(1)(d) of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962, was declined by the respondents/authorities.

Brief facts of the case are that the petitioner was arrested in case FIR No.23 dated 22.03.2013 registered under Sections 21 and 22 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Chabhal, Tarn Taran and after facing the trial, he was held guilty for offence punishable under

Sections 21 and 22 of the NDPS Act and was sentenced to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs.1 lac and in default of payment of fine to further undergo simple imprisonment for a period of 06 months by the Judge, Special Court, Tarn Taran.

Counsel for the petitioner has argued that on an earlier occasion, the petitioner has moved an application for release on parole, which was declined by the Jail Authorities and thereafter, the petitioner filed a writ petition i.e. CWP No.29702 of 2018 which was allowed on 29.01.2019 by this Court by passing the following order:-

“Reply by way of affidavit of Hardev Singh, PPS, Deputy Superintendent of Police, Sub Division Goindwal Sahib, District Tarn Taran, on behalf of respondents No. 1, 3, 4 alongwith annexure filed in Court today and same is taken on record.

Petitioner is undergoing 14 years imprisonment for committing offence under Sections 21, 22 of NDPS Act, 1985, in addition to fine, vide judgment of conviction and order of sentence dated 28.3.2017, passed by learned Judge, Special Court, Tarn Taran. His prayer for parole to meet family members under Section 3(1) (d) of Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962, has been declined by Deputy Commissioner, Tarn Taran, on the ground that petitioner will abscond after getting parole and there is danger to security/maintenance and peace of State, vide order dated 3.10.2018 (Annexure-P-2).

In the reply, State has taken same stand stating that inquiry was got conducted through police and there is danger that petitioner, if released on parole, will abscond and there is danger to security of State also.

I have heard learned counsel for parties and have also carefully gone through file.

After going through reply and facts of case, I am of view that there is nothing on file to shows that while in jail, petitioner committed some offence or his conduct is such that he will abscond or there will be danger to security of State or public peace. He wants to meet his family. Therefore, apprehension of Deputy Commissioner/District Magistrate, Tarn Taran, is imaginary and without any material on file to arrive at such conclusion. As such, impugned order dated 3.10.2018 (Annexure-P-2), passed by Deputy Commissioner, Tarn Taran, is set aside. Petitioner is ordered to be released on parole for four weeks to meet his family members on his furnishing adequate surety to satisfaction of Deputy Commissioner/District Magistrate, Tarn Taran. Petition is thus allowed.”

Counsel for the petitioner has further submitted that on similar grounds again, the Senior Superintendent of Police, Tarn Taran has submitted a report that in case the petitioner is released on parole, there is a possibility of breach of peace and maintenance of public law and order. It is further submitted that this objection of the Senior Superintendent of Police was already considered by this Court while deciding the aforesaid writ petition i.e. CWP No.29702 of 2018 filed by the petitioner.

Counsel for the petitioner has also argued that the only ground taken by the Senior Superintendent of Police, Tarn Taran while not giving a no objection is that in case the petitioner is released on parole, he may again involved in narcotic business or may jump the parole. It is also submitted that during the pendency when the petitioner

was facing the trial, he was on bail and from the year 2013 till the decision of the trial in the year 2017 i.e. for a period of about 04 years, the petitioner has never misused the concession of bail and was not involved in any other case during this period and therefore, the apprehension of the Senior Superintendent of Police, Tarn Taran is misconceived.

Counsel for the petitioner has also submitted that the petitioner has availed the parole in pursuance to the order dated 29.01.2019 again and he has never misused the parole and has surrendered before the Jail Authorities within the time granted to him.

Counsel for the State has filed the affidavit of the District Magistrate-cum-Deputy Commissioner, Tarn Taran and a perusal of the affidavit show that initially, the case of the petitioner was recommended by the Superintendent, Central Jail, Amritsar for granting parole for a period of 08 weeks and it was sent to the Senior Superintendent of Police, Tarn Taran for seeking his report in which he has recommended that if the petitioner is granted parole, he may indulge in narcotic business or jump the parole.

Thereafter, the Superintendent, Central Jail Amritsar again sent back the case to the Senior Superintendent of Police, Tarn Taran for re-examination of the case with regard to the parole and again, a similar objection was raised by the Senior Superintendent of Police, Tarn Taran.

A perusal of this affidavit show that the Superintendent, Central Jail, Amritsar on 02 occasions recommended parole to the petitioner for a period of 08 weeks, which was however, not granted by

the Senior Superintendent of Police, Tarn Taran.

After hearing the counsel for the parties, considering the observations made by this Court in CWP No.29702 of 2018 (Annexure P-4) and also in view of the fact that the petitioner was facing the trial since 2013 and he was on bail and has never misused the concession of bail as in the intervening period when he was facing the trial from the year 2013 to 2017, he was not involved in any other case and after availing the parole, he has surrendered back on time before the Jail Authorities, I find that the impugned report dated 15.08.2019 as well as the order dated 23.10.2019 passed by the District Magistrate-cum-Deputy Commissioner, Tarn Taran, are not sustainable.

Accordingly, the present petition is allowed and the report dated 15.08.2019 as well as the order dated 23.10.2019 passed by the District Magistrate-cum-Deputy Commissioner, Tarn Taran are set-aside and the District Magistrate-cum-Deputy Commissioner, Tarn Taran is directed to grant parole to the petitioner for a period of 08 weeks, in accordance with the law.

Disposed of.

07.01.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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