

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-534-2020

Date of Decision:05.10.2021

Sukhdev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present: Ms. Bhupinder Pal Kaur Brar, Advocate,
for the petitioner.

Mr. IPS Doabia, Addl. A.G., Punjab.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

Instant petition has been filed under Article 226/227 of the Constitution of India for quashing/setting aside the order dated 13.11.2019(P-1) passed by respondent No.3-District Magistrate, Moga, whereby case of the petitioner seeking parole has been rejected.

The petitioner was convicted and sentenced in FIR No.146 dated 28.08.2014, under Sections 25/15/61/85 of the NDPS Act, registered at Police Station, Doraha, District Ludhiana and accordingly, he has been convicted and sentenced to undergo 12 years imprisonment. Against the judgment of conviction and order of sentence, petitioner filed an appeal before this Court, which is still pending admitted for final adjudication.

It is argued that the petitioner applied for 06 weeks' parole as per the provisions of Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act') and his case was sent to

the District Magistrate, Moga, after completing all the formalities. But the parole case of the petitioner has been rejected vide order dated 13.11.2019 (Annexure P-1), on the ground that there is danger to peace, law and order and there is every apprehension that he may abscond and again indulge in drugs activities.

On the other hand, learned State counsel strongly opposes the submissions made by learned counsel for the petitioner and prays for dismissal of instant petition.

We have given our thoughtful considerations to the matter. As already noticed, the petitioner is undergoing 12 years imprisonment for having committed offences punishable under Sections 25/15/61/85 of the NDPS Act. During his incarceration in jail, he has sought temporary release in terms of Section 3(1) (d) of the Act, which 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: -

(a) to (c) xxxxxx

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

In terms of Section 3(2)(b) of the Act where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1) the period for which a prisoner may be released shall be determined by the State Government so as not to exceed four weeks. Section 6 of the Act provides that “consultation with District Magistrate is not necessary where prisoners are not to be released”. Sub-section (ii) of Section 6 reads as follows:-

“6 (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 authorized by it in this behalf is satisfied that, that his release is likely to endanger the security of the State or maintenance of public order.”

In view of the aforesaid provisions of law, it is crystal clear that while considering the request of the petitioner for grant of parole, discretion has been bestowed upon the concerned Officer/State Government. It clearly indicates that the release on parole of a convict cannot be claimed as a matter of right as the legislature has used the word 'may' not 'shall'.

From the perusal of the case file, it would be revealed that the petitioner is undergoing 12 years' imprisonment for having committed offences punishable under Sections 25/15/61/85 of the NDPS Act. The case of the petitioner has been rejected on the basis of report of Senior Superintendent of Police, Moga, where he has shown apprehension of convict's absconding from parole and again indulging in smuggling of narcotic substances. The petitioner committed a heinous crime and if such type of convict is enlarged on parole, there is every possibility that he can misuse the concession of parole.

Otherwise also, it is the subjective satisfaction of the authority concerned to evaluate the circumstances seeking parole. Unless and until some arbitrariness or malafide is apparent in the order of the said authority, only then, this Court should intervene under Article 226 of the Constitution of India.

In view of the above, we do not find any reason to interfere in the matter as the same has been considered after taking into consideration

all the facts collected for considering the request of the petitioner for releasing him on parole. Accordingly, the present criminal writ petition is dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

05.10.2021

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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO