

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

**CRWP No. 3223 of 2021
Date of decision: 10.11.2021**

Mahesh Kumar @ Manga

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 15.02.2021 (Annexure P-2), passed by the District Magistrate, Moga, vide which the prayer of the petitioner for grant of eight weeks' parole to enable him to meet his family has been declined.

Learned counsel for the petitioner submits that the petitioner is presently undergoing the sentence for a period of ten years in FIR No. 199 dated 22.11.2015, registered under Section 22/61/85 of the NDPS Act at Police Station South City Moga, District Moga and his appeal bearing CRA-S-4297-SB-2018 is pending before this Court.

Learned counsel further submits that the petitioner has applied for grant of parole for a period of eight weeks and the Panchayat of the village has recommended the case of the petitioner and later on, the

case was forwarded by the Superintendent of Jail to District Magistrate, Moga for releasing the petitioner on parole.

Learned counsel further submits that the petitioner also stands convicted in another case for ten years in FIR No. 135 dated 04.08.2016, registered under Section 22/61/1985 of the NDPS Act at Police Station City South Moga, District Moga.

It is further submitted that the District Magistrate, Moga, vide impugned order dated 15.02.2021, has rejected the prayer of the petitioner for grant of parole on the ground that it can endanger the peace and security of the State as the petitioner may abscond or indulge himself in selling the intoxicant substances or may come in contact with antisocial elements and, therefore, his case cannot be considered for grant of parole under Section 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1862.

A reply, by way of affidavit of the DSP (City), Moga, is on record, as per which, the petitioner stands convicted in two cases under the NDPS Act as noticed above, therefore, the request of the petitioner for grant of parole was declined, vide order dated 15.02.2021, however, it is admitted that when the petitioner has applied for the same, his application along with the recommendation of the Panchayat was sent to the District Magistrate, Moga.

A separate reply, by way of the affidavit of Superintendent, Central Jail, Faridkot, has been filed today in Court, in which similar grounds have been taken for rejection of the parole of the petitioner. As per custody certificate attached with the affidavit, the petitioner has

undergone a period of 05 years and 24 days of total sentence including remissions out of the total sentence of ten years awarded in the present case/FIR.

In reply, learned counsel for the petitioner has relied upon an order dated 28.10.2021 passed in ***CRWP No. 10162 of 2021***, titled as ***Naveen Kumar vs. State of Haryana & Ors.***, wherein considering the similar circumstances, this Court has allowed the parole holding that even if the petitioner is not entitled to get parole under the Parole Rules, the aura of Article 21 of the Constitution of India would remove any such restrictions if the facts and circumstances justify such parole and a prisoner cannot be deprived of his rights to take care of his family members. It is also observed that a prisoner also needs the cooperation, support and financial help from his family members. Accordingly, it was directed that the prisoner be granted parole for 14 days.

After hearing learned counsel for the parties, considering the facts and circumstances of the case, I find that the opinion formed by the District Magistrate, Moga that in case the petitioner is released on parole, he may abscond or may again indulge in similar activities is not based on any report from the police, rather the village Panchayat has supported the case of the petitioner that his release will not endanger the tranquility in the village and even a local Municipal Councilor has taken the responsibility of the petitioner.

Accordingly, the present petition is allowed and the impugned order dated 15.02.2021 is hereby set aside.

The petitioner is directed to be released on parole for a period

of eight weeks on furnishing requisite surety bonds to the satisfaction of the District Magistrate, Moga or any other condition which may be imposed by the District Magistrate, Moga.

10.11.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No