

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-4769-2020 (O&M)
Date of Decision:-26.2.2021

Sunny Loomba @ Kainchi

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab,
assisted by ASI Baldev.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking setting aside of order dated 28.2.2020 (Annexure P-4) passed by Deputy Commissioner-cum-District Magistrate, Kapurthala, whereby his application for grant of parole has been declined.
2. The petitioner stands convicted for offences under Sections 21 and 22 of Narcotic Drugs and Psychotropic Substances Act vide judgment and order dated 22.4.2019 (Annexure P-1) passed by learned Judge Special Court, Kapurthala and has been sentenced as follows:

Sr. No.	Name of accused	Under Section	Sentence Awarded
1.	Sunny Loomba	21 NDPS Act	Rigorous Imprisonment for 10 years and to pay fine of Rs.One lac. In default of payment of fine to further undergo Rigorous Imprisonment for one year.
2.	Sunny Loomba	22 NDPS Act	Rigorous Imprisonment for 10 years and to pay fine of Rs.One lac. In default of payment of fine to further undergo Rigorous Imprisonment for one year.

3. The appeal against the aforesaid judgment and order dated 22.4.2019 is stated to be pending in this Court. The petitioner moved an application dated 13.8.2019 (Annexure P-2) to the District Magistrate, Kapurthala through Superintendent, Central Jail, Kapurthala seeking parole in terms of Section 3(1) of Punjab Good Conduct Prisoners (Temporary release) Act, 1962, which was declined by the Deputy Commissioner-cum-District Magistrate, Kapurthala vide order dated 28.2.2020 (Annexure P-4) *inter alia* on the following grounds:

“6. The report sent by SSP, Kapurthala was carefully considered and the parole release case of prisoner Sunny Loomba sent by Superintendent, Central Jail, Kapurthala was considered on the basis of facts contained therein. From the police report it is found that against prisoner Sunny Loomba son of Baldev Loomba FIR No.4 dated 06.01.2015 u/s 21, 22, 61, 85 NDPS Act PS Sadar Kapurthala is registered against him. In the said case one car indigo, 510 gram Heroin, 260 grams intoxicant powder and 3 lakhs Indian currency was found recovered. He is undergoing 10 years imprisonment in said case in Central Jail, Kapurthala, Apart from this FIR No.8 dated 07.01.2015 u/s 21/61/85 NDPS Act PS City, Kapurthala in which he has been convicted on 05.04.2017. In FIR No.209 dated 24.12.2012 u/s 21/61/85 NDPS Act PS Kotwali Kapurthala in which he has been convicted on 08.07.2015. In this manner all the cases registered against prisoner Sunny Loomba are under NDPS Act. On being released on parole he is likely to again

indulge in the business of selling intoxicants and due to this there is apprehension of breach of peace in the area and there could be harm to the people of the State.”

4. When this matter was taken up for hearing on 21.1.2021, this Court had asked the State to furnish some information. The order dated 21.1.2021 reads as follows:

“During the course of arguments learned counsel for the petitioner *inter alia* raised the following three submissions:

- (i) that one of the reason mentioned for rejection of his parole vide order dated 28.2.2020 (Annexure P-4) is that the petitioner stands convicted in respect of FIR No.8 dated 7.1.2015 registered at Police Station City, Kapurthala under Sections 21/61/85 of NDPS Act, whereas the said averment is factually incorrect inasmuch as it is his brother Mannu Lumba, who stands convicted vide judgment dated 15.2.2017 (Annexure P-5) in FIR No.8 dated 7.1.2015.
- (ii) that an identically situated co-accused in the instant case namely Jatinder Kumar @ Jinder @ Dhaniala who also was convicted alongwith the petitioner in FIR No.209 dated 24.12.2012 registered at Police Station Kotwali, Kapurthala under Section 21/61/85 of NDPS Act vide judgment dated 8.7.2015 (Annexure P-6), has already been extended the concession of parole and that in these circumstances the petitioner cannot be discriminated in the matter of grant of parole.
- (iii) that various other co-accused in the instant case i.e. in FIR No.04 dated 6.1.2015 registered at Police Station Sadar, Kapurthala under Section 21 of NDPS Act, who were convicted vide judgment dated 22.4.2019 (Annexure P-1) namely Ajay Kumar @ Dheru, Surinder Malhotra @ Mama and Shakini Kumar @ Bawa @Shakil Kumar have also been extended the benefit of parole.

Learned State counsel, however, requests for a short adjournment to verify the aforesaid facts.

In view of the aforesaid request, the matter is adjourned to 3.2.2021.”

5. Pursuant to the aforesaid order dated 21.1.2021, reply by way of affidavit of Sh. Baljit Singh, PPS, Superintendent Central Jail, Kapurthala has been filed by learned State counsel today in Court, which is taken on record, wherein the contentions as raised by the learned counsel as recorded above in order dated 21.1.2021 have not been disputed and it has been admitted that the petitioner was not an accused in FIR No.8 dated 07.01.2015 and that it was on account of inadvertence that the said FIR came to be mentioned in the report of Senior Superintendent of Police, Kapurthala. It has also been admitted in para No.6 of the reply that co-accused Jatinder Kumar @ Jinder @ Dhaniala has been granted parole on 27.11.2019. In para No.7 of the reply, it has been admitted that various other co-accused namely Ajay Kumar @ Dheru, Surinder Malhotra @ Mama and Shakini Kumar @ Bawa @ Shakil Kumar have also been released on parole.
6. From the aforesaid reply, this Court is of the opinion that the petitioner cannot be discriminated when identically situated co-accused have been granted parole. Rather it appears that some incorrect information had been recorded in the impugned order, whereby application of the petitioner for grant of parole was declined. The petition, as such, is accepted and the impugned order dated 28.2.2020 (Annexure P-4) passed by Deputy Commissioner-cum-District Magistrate, Kapurthala is set aside. The petitioner is ordered to be released on parole for a period of 6 weeks subject to his furnishing bail bonds/surety bonds to the satisfaction of the District Magistrate, Kapurthala, who would be at liberty to impose any such

condition as deemed appropriate so as to ensure that the petitioner duly surrenders back after availing parole.

26.2.2021

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No