

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

**CRWP-5988-2021 (O&M)
Date of Decision:09.08.2021**

Jatinder Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE VIVEK PURI.**

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

Mr. Sahil Sharma, DAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Challenge in the instant petition is to the order dated 19.04.2021 (Annexure P-2) passed by the District Magistrate, Ludhiana vide which request of the petitioner for temporary release under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the 1962 Act') has been declined.

Reply by way of affidavit of Devinder Kumar, PPS, Assistant Commissioner of Police (East), Ludhiana on behalf of respondents No.1 and 2 has been filed. The same is taken on record and a complete copy has been furnished to counsel opposite.

With the consent of the counsel for the parties, the case is taken up for disposal today itself.

Uncontroverted facts are that petitioner was arrested in FIR No.274, dated 24.11.2017 registered at Police Station Meharban, District Ludhiana under Section 18/61/85 of the NDPS Act. In the trial that ensued, petitioner stands convicted and sentenced to undergo imprisonment for a period of 12 years as also to pay a fine vide judgment dated 01.10.2020 passed by the trial Court. Petitioner has filed CRA-D-372-2020 against the judgment of conviction and which is pending final adjudication before this Court.

At present, petitioner is confined in Central Jail, Ludhiana. On 07.11.2020, petitioner applied for eight weeks parole under Section 3(1)(d) of the 1962 Act to meet his family members and to look after household affairs. Apparently, case of the petitioner was forwarded by the Superintendent, Central Jail, Ludhiana to the District Magistrate, Ludhiana and who has rejected the prayer on the basis of following grounds as would be discernible from the impugned order itself:

“The convict-Jatinder Singh S/o Sahib Singh can do the business of selling drugs by coming on parole and there is apprehension regarding disturbance of law and order and the local police has objection of the same.”

Counsel for the petitioner contends that temporary release on parole could have been declined in case the circumstances provided for by the provisions of Section 6(2) of the 1962 Act i.e. release of the petitioner is likely to endanger the security of the State or the maintenance of public order and not on any other ground.

Per contra, learned State counsel submits that getting a report from the District Magistrate was necessary as per Scheme of the Act and

since the recommendation has been made against the petitioner, the prayer for parole has been rightfully declined.

We have given our thoughtful consideration to the matter.

The provisions of the Act provide for the temporary release of prisoners for good conduct on certain conditions as enacted by the legislature of the State of Punjab. Temporary release on parole is granted on certain conditions as envisaged by the provisions of Section 3 of the Act; besides, temporary release on furlough is granted in terms of Section 4 of the Act. In terms of Section 5A of the Act, prisoners are not entitled to temporary release in certain cases, like cases where death sentence has been awarded or a prisoner is a 'hardcore prisoner'. 'Hardcore prisoner' has been defined in Section 2 (aa) of the Act as follows:-

"(aa) "hardcore prisoner" means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;"

The petitioner does not fall under the said category and therefore, is not a hardcore prisoner. Besides, Section 6 (2) of the Act provides that notwithstanding anything contained in Sections 3 and 4 of the Act, no person is 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 authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order.

Undoubtedly, parole or furlough is a concession granted to a

prisoner. However, grant of such concession is regulated by a statute and on fulfilment of conditions prescribed therein, a prisoner is entitled to parole. The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of prisoner is in exercise of the right created under that statute. In other words, the authorities under the 1962 Act cannot act arbitrarily, capriciously or without due application of mind.

Under Section 3(1)(d) of the 1962 Act, temporary release of a prisoner is permissible if it is desirable so to do for any other “*sufficient cause*”. In the explanation to Sub Clause (d), three eventualities have been culled out which would be included within the expression “*sufficient cause*”. However, such explanation is not exhaustive in nature. It is not even the case made out on behalf of the State that the reason for which the petitioner was seeking parole i.e. to meet his family members and to look after household affairs would not be covered under Section 3(1)(d).

We find that the impugned order has been passed in a routine and mechanical fashion only by reciting that if such concession is granted, there would be apprehension regarding disturbance of law and order. However, no foundation/material has been adverted to in the reply or by learned State counsel during the course of the arguments to justify such apprehension.

In our considered view the impugned order, as such, cannot sustain.

We may also take note that there is no other case pending against the petitioner except the one in which he is undergoing the sentence

and as noticed hereinabove.

For the reasons recorded above, the instant criminal writ petition is allowed. The impugned order dated 19.04.2021 (Annexure P-2) passed by the District Magistrate, Ludhiana is set aside. Petitioner is held entitled to the concession of parole for a period of eight weeks. Competent authority is directed to pass necessary orders for temporary release of the petitioner on parole for a period of eight weeks subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behavior during the period of parole and to also surrender in the Jail after expiry of such period.

Petition is allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

09.08.2021
harjeet

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| i) Whether speaking/reasoned? | Yes/No |
| ii) Whether reportable? | Yes/No |