

In the High Court of Punjab and Haryana at Chandigarh

CRWP No. 9884 of 2020
Date of Decision: 19.3.2021

Jaspal Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. H.S.Multani, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Article 226/227 of the Constitution of India for grant of eight weeks' parole to the petitioner under Sections 3 and 4 of the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962.

Replies by way of affidavit of Deputy Superintendent of Police (SD), Ferozepur, District Ferozepur dated 08.2.2021 and Superintendent, Central Jail, Patiala dated 22.2.2021, filed in the Registry, are taken on record.

Learned counsel for the petitioner submits that the petitioner is undergoing sentence for a period 10 years in case FIR No. 207 dated 15.12.2015 under Section 22 of the NDPS Act, 1985 and the appeal preferred by her, against the said conviction and sentence, is pending adjudication in the this Court. He further submits that the petitioner has filed an application for grant of eight weeks' parole, which was declined by

the District Magistrate Moga vide order dated 08.6.2020 (Annexure P-4). Learned counsel further submits that undisputedly, the petitioner has been convicted in two other cases under the NDPS Act in which recovery fell under the non-commercial quantity and the petitioner has already undergone the sentence imposed in the said cases. Learned counsel further submits that the only ground, while declining parole to the petitioner, is that there is an apprehension of the convict being an absconder, after her release on parole. It is further submitted that mere apprehension cannot be a ground to decline the prayer for release on parole. In support of his arguments, learned counsel has placed reliance on a judgment passed by a Co-ordinate Bench of this Court in ***CRWP-4219-2020*** titled ***Rohit @ Kala versus State of Haryana and others***, decided on ***26.8.2020***.

On the other hand, learned State counsel submits that the petitioner is a habitual offender and there were two other cases i.e. FIR No. 13/2015 under Section 15 of the NDPS Act, registered at Police Station Sadar Moga and FIR No. 32/2017 under Section 15 of the NDPS Act registered at Police Station Baghapurana against her, in which she has been convicted. Moreover, in case the petitioner is released on parole, there is a risk to State security/maintenance of public order, because she is habitual to smuggle intoxicant substances and there is a likelihood that the petitioner may abscond after being released on parole.

I have heard the learned counsel for the parties.

In the present case, the petitioner has already undergone 03 years and 02 months of imprisonment, out of 10 years of total sentence. It is the settled principle that the statutory order passed under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 has to be passed on the

basis of the provisions and the convict has a right to parole. The only factum which weighed in the mind of the District Magistrate-respondent No. 3 was that there are chances of the convict being absconder, after her release on parole. An administrative order has to be reasonable and the authorities are to take into consideration all the relevant facts and exclude irrelevant facts from consideration. The decision would neither be perverse nor irrational, improper or contradictory to which no person, properly advised on the facts, would reach. Thus, the order passed by District Magistrate, Moga-respondent No. 3 is not a speaking order and is liable to be set aside.

One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking order. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.

Accordingly, the order dated 08.6.2020 (Annexure P-4) passed by District Magistrate, Moga-respondent No. 3 is set aside. District Magistrate, Moga-respondent No. 3 is directed to reconsider the issue of releasing the petitioner on parole.

The petition stands disposed of.

(HARNARESH SINGH GILL)
JUDGE

March 19, 2021
Gurpreet

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