

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

CRWP-9145-2021 (O&M)
Date of decision: 11.11.2021

Gian Ram

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Surinder Garg, Advocate, for the petitioner.

Mr. I.P.S. Doabia, Addl. AG, Punjab.

RITU BAHRI, J. (Oral)

Counsel for the petitioner has referred to the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 whereby under Rule 3 Sub Rule 2 Proviso, the application for parole can be entertained if the sentence after conviction is at least 4 months in Jail and his conduct is good.

In the present case, as per reply dated 31.10.2021 filed by Deputy Superintendent of Police, Sub Division Kotkapura, the case of the petitioner has not been recommended for parole. As per reply, the petitioner has served less than one year of his sentence after conviction. As per custody certificate, he has undergone 9 months and 12 days post conviction. However, keeping in view the rules and proviso as referred to above, his case for parole can be considered as he has already 4 months of custody. The second ground taken as per reply is that he has criminal antecedents and involved in another FIR. Para 6 thereof reads as under : -

“6. That as per the report of SHO, PS City Kotkapura the verification of criminal antecedents of petitioner disclosed his

involvement in other FIRs mentioned below : -

Sr.	<i>FIR No.</i>	<i>U/Sections</i>	<i>Status</i>
1	132 dated 7.8.2004	457/380 IPC PS City Kotkapura	Acquitted on 2.12.2009
2	53 dated 14.4.2018	21/61/85 of NDPS Act, PS City Kotkapura	Convicted on 8.4.2021
3	108 of 2019	452/354/323/506 IPC, PS City Kotkapura	Under trial

Along with the reply, the respondents also placed on record order passed by Deputy Commissioner-cum-District Magistrate (Annexure R-1) whereby the case of the petitioner for parole has been rejected. The only ground for rejecting his claim for parole is that as per report of SSP, Faridkot (Annexure P-6), there is likelihood to commit another offence under NDPS Act and there is apprehension of breach of Public Order in the State.

This aspect with respect to disturbance to Public Order in the State has also been considered by the Coordinate Bench of this Court in **Baljit Singh v. State of Punjab and others; CRWP-1077-2016** decided on 15.5.2017 while observing that the petitioner in that case will cause disturbance in public order cannot be made a ground to decline prayer for parole. In paragraph 18, the Division Bench observed as under : -

“18. The threat to security of the State is to be understood as an act which may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorists operations engineered by foreign agencies. It can also be effected by passing of classified information like documents, secrets, maps etc. to foreign countries or through undesirable foreign links. An act which

poses a threat to the State is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order

as the case may be for temporary release of prisoners on parole.”

In the present case, as per report of SSP, Faridkot (Annexure P-6), it has been observed by the SSP that the petitioner can commit the offence under NDPS Act after coming out of the jail and there is apprehension of breach of public order in the State. Keeping in view the judgment of Baljit Singh's case (supra), the above said opinion given by SSP, Faridkot in his report (Annexure P-6) cannot be made ground to decline parole to the petitioner and this report (Annexure P-6) has been made basis for rejecting the application for parole by Deputy Commissioner-cum-District Magistrate (Annexure R-1). Even the likelihood of committing crime under NDPS Act cannot be made ground to reject the claim of the petitioner for parole.

In view of above discussion, above CRWP deserves to be allowed. Order Annexure R-1 is set aside and direction is given to the respondents to release the petitioner on parole for completing his household works for 8 weeks on furnishing of necessary bonds and sureties to the satisfaction of the District Magistrate concerned. The date of release and surrender shall be noticed by the releasing authority.

Writ petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

(KARAMJIT SINGH)
JUDGE

November 11, 2021

Paritosh Kumar

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