

CRWP-9906-2020

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

CRWP-9906-2020

Date of decision: 29.01.2021

Gurmail Kaur @ Melo

...Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Parminder Singh Sekhon, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Reply by way of short affidavit of the Superintendent, Central Jail, Patiala, has been filed through e-mail. Print out of the same is taken on record.

The present criminal writ petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of mandamus directing the respondents to release the petitioner on parole for a period of eight weeks, enabling her to perform the last rites of her husband and to look after her family.

Learned counsel for the petitioner submits that vide judgment of conviction and order of sentence dated 25.09.2019 passed by the learned Judge, Special Court, Patiala, in FIR No.124 dated 30.12.2016, under Section 21 NDPS Act, registered at Police Station Lahori Gate, District

CRWP-9906-2020

Patiala, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of ten years. Being dissatisfied with the said judgment, the petitioner preferred an appeal, bearing No.CRA-S-3280-2019, before this Court and the same is pending adjudication. During her confinement in the jail, her husband expired on 03.10.2020. It is further contended that parole of the petitioner has been declined on the ground that there are other FIRs pending or registered against her. In support of his contentions, the learned counsel relied upon a judgment dated 07.01.2020 passed by a Coordinate Bench in CRWP No.2156 of 2019, titled as '**Jeet Singh vs. State of Punjab and others**'.

Per contra, the learned State counsel opposes the prayer made in the present petition and submits that there are many cases pending or registered against the petitioner and if released on parole, the possibility of her again engaging herself in the criminal activities, cannot be ruled out.

I have heard the learned counsel for the parties.

The temporary release of prisoner for good conduct is governed by the Punjab Good Conduct Prisoners (Temporary) Release Act, 1962 (hereinafter referred to as "1962 Act"). The only embargo upon the release of the prisoner is laid down in Section 6 of the 1962 Act, which is reproduced as under:-

"[6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released. -Notwithstanding anything contained in sections 3 and 4,--
(i) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and
(ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government

CRWP-9906-2020

or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order".

Section 6 of 1962 Act, came up for consideration before a Division Bench of this Court in **Jassa Singh @ Jassa Vs. State of Punjab** 2016(5) RCR (Criminal) 522. After noticing the provision, the Division Bench held as under:-

“7. In terms of the above Section 6 (ii) of the Act, a prisoner is not 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 authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order. Temporary release of a prisoner on parole or furlough as the case may be can be denied if his release is likely to endanger the security of the State or the maintenance of public order. For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

CRWP-9906-2020

Another Division Bench of this Court in **Ram Chander Vs. State of Punjab and others** 2017(3) RCR (Criminal) 340, held that the likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not be taken as an apprehension of a threat to the security of the State or maintenance of public order.

In the backdrop of the case law discussed above, facts of the present case may be examined. There is nothing on record to show that the conduct of the petitioner in jail has not been found good. The petitioner has never been released on parole earlier. No doubt, there are other cases pending or registered against the petitioner, yet the likelihood of her involvement in similar offence while on parole is not be taken as an active and real apprehension of threat to the security of the State or to the maintenance of public order as held by a Coordinate Bench of this Court in CWP No.19340 of 2019, titled as '**Manjit Singh @ Laddu Vs. State of Punjab and others**', decided on 02.09.2019. Merely on the basis of an apprehension, benefit of parole cannot be denied.

The petitioner has sought the parole, enabling her to perform the last rites of her husband and to look after her family. In support of her claim, the petitioner has also tendered a panchayatnama dated 05.10.2020 (Annexure P-4). The reasons given by the petitioner for her release on parole will fall within the ambit of “sufficient cause” and therefore, her request merits acceptance.

As a consequence of the above discussion, the petitioner is ordered to be released on parole for a period of four weeks from the date of

CRWP-9906-2020

her release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required in the Jail Manual towards the ends of securing the presence of the petitioner in jail after the period of parole is over and done with and the temporary release on parole is not misused.

Disposed of.

29.01.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No