

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

CRWP No. 867 of 2021
Date of decision: 31.05.2022

204/3

Gursahib Singh

....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Satwant Mehta, Advocate,
for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed for release of the petitioner on parole raising challenge to the order dated 15.05.2020 (Annexure P-2) wherein, the Senior Superintendent of Police, Tarn Taran gave an adverse recommendation regarding the release of the petitioner on account of the fact that he is habitual of consuming intoxicants and while on parole, he could cause threat to peace and may indulge in selling intoxicating substances and may be declared as a proclaimed offender. Keeping in view the adverse recommendation, the rejection order dated 19.05.2020 has been passed by the Deputy Commissioner, Tarn Taran (Annexure R-2/T).

The reasoning given in the said order is that in view of the adverse recommendation that the convict is a drug addict and if released on parole, he could harm peace and there is apprehension that he would again

the rejection was there.

We are of the considered opinion that the order is *de hors* the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (in short 'the 1962 Act') and has lost sight of the purpose for which the said Act has been promulgated. A perusal of the custody certificate dated 30.05.2022, which has been filed today by the State and which is taken on record, would go on to show that the petitioner has undergone actual period of 2 years, 11 months and 16 days by now on account of the conviction which has been recorded of 12 years under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') on 18.01.2020. It is a matter of record that he has also been convicted for a period of 4 years and 6 months in FIR No. 106 under Section 21, 61 and 85 of the NDPS Act and also was involved in FIR No. 22 dated 03.02.2004 under Section 61 of the Punjab Excise Act, 1914. The custody certificate would also go on to show that he has not been granted the benefit of parole since the date of his conviction. A period of more than 2 years has gone by.

Counsel for the petitioner has pointed out that the parole is sought on the ground that the wife of the petitioner has passed away on 17.04.2017 and he has two children, a son and a daughter, aged around 20 years and his father and mother are very old and there is nobody to take care of the children. His house is to be repaired and it is on this account, he seeks the benefit of consideration under the provisions of Section 3(1)(d) of the 1962 Act, which is of wide connotation that it is desirable to do so for any sufficient cause.

The present petition has remained pending before this Court for substantial period on account of the Covid-19 situation and the matter could

not be taken up. The order of rejection as such was passed way back on 19.05.2020 and now a period of more than 2 years has expired and it would not be in the interest of justice to remand it for fresh decision.

In such circumstances, we are of the considered opinion that the reasons given firstly are not germane to the controversy as such that he is a drug addict. It is not disputed that the petitioner is in custody since the date of his conviction, which is of 18.01.2020. On what basis the Senior Superintendent of Police and the Deputy Commissioner have come to this conclusion that he is suffering from such a problem has not come forth on the record, specially keeping in view the fact that he is lodged in jail and, therefore, the reasoning as such cannot be justified. The ground that there is an apprehension that he would be again involved and that he may abscond are mere imaginations of the authorities as such. It is the duty of the State itself that the convict should not indulge in such activities and preventive measures should be taken and on account of such apprehensions, the benefit of the release cannot be denied. The earlier involvement was of the year 2005 and much water has flown down after that. He is already suffered imprisonment for 4-1/2years and, therefore, for the same, he cannot be penalized twice by denying him the benefit of parole.

Accordingly, we are of the considered opinion that the reasoning given in the impugned order 15.05.2020 (Annexure P-2) and the subsequent order passed by the Deputy Commissioner 19.05.2020 (Annexure R-2/T) are not justified and do not stand reason. They are accordingly quashed and a writ of mandamus is issued to release the petitioner on parole for a period of 4 weeks. He shall surrender back to the

Jail Authorities on the expiry of the said period.

The petition stands disposed off accordingly.

(G.S. SANDHAWALIA)
JUDGE

31.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No