

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-5256-2022
Date of decision : 07.12.2022

Jagdeep Singh @ Deepa

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.G.S.Sandhu, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a petition under Article 226 of the Constitution of India for setting aside the order dated 04.05.2022 passed by respondent no.3 rejecting the parole case of the petitioner with a further prayer to issue directions to respondents to release the petitioner on parole for 8 weeks to meet his family members and to settle household affairs.

Learned counsel for the petitioner has submitted that the petitioner was convicted in FIR no.207 dated 22.12.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short "NDPS Act") at Police Station City Malout, District Sri Muktsar Sahib and sentenced to rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1 lac by the learned Judge, Special Court, Sri Muktsar Sahib on 09.09.2021 and the petitioner is undergoing the said sentence and the criminal appeal filed against the same is pending. It is submitted that the

8 weeks parole before the jail authorities under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962 (Amended Act 2015) (in short “the Act”) to meet him his family members and also to look after the house affairs and the said case was initiated and respondent no.4 had recommended 8 weeks parole case of the petitioner and forwarded the same to respondent no.3 and respondent no.2. It is further submitted that the case of the petitioner has been rejected vide the impugned order by observing that the petitioner, from whom recovery of 40 injections of brufin and 40 injections of avil was effected, would indulge in the business of drugs in case the concession of parole is granted to him. It has also been observed that the petitioner is a habitual offender. Learned counsel for the petitioner has submitted that the petitioner is not involved in any other case and thus, the observation made in the impugned order to the effect that the petitioner is a habitual offender, is illegal and against the law. It is further submitted that it has been repeatedly held by various courts that merely on the basis of surmises and conjectures, the grant of parole can not be denied to the petitioner. It is stated that the petitioner has two minor daughters and one old mother and his wife is suffering from HIV and thus, the petitioner deserves the concession of parole. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in case titled as “***Jugraj Singh @ Bhola Vs. State of Punjab and others***”, reported as ***2010(25) R.C.R. (Criminal) 138*** as well as judgment of the Co-ordinate Bench of this Court in “***Jeet Singh Vs. State of Punjab and others***, reported as ***2020(3) R.C.R. (Criminal) 516***.

Learned State counsel on the other hand has opposed the present petition and has submitted that since the petitioner has been

convicted under the NDPS Act, thus, the authorities found that there is every possibility that he might indulge in drug business and has thus, stated that the impugned order has been rightly passed.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner is stated to have two daughters and one old mother and his wife is stated to be suffering from HIV and the petitioner wishes to meet his family members and also wishes to look after and settle the household affairs and thus, is seeking parole for the said purpose.

The Hon'ble Division Bench of this Court in Jugraj Singh @ Bhola case (supra), has held as under: -

"It is also conceded position that the petitioner can be temporarily released on parole for four weeks under Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as 'the Act') to enable him to meet his family members. In our opinion, the release of a convict on parole is a wing of reformatory process. Section 3 of the Act has been enacted as a reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined to him. In the instant case, no such strong material or basis has been relied upon by the respondents while rejecting the prayer of the petitioner for releasing him on parole for four weeks to meet his family members."

A perusal of the above-said judgment would show that it has been observed that a convict can be temporarily released on parole for four weeks under Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 to enable him to meet his family members and the release of a

convict on parole is a wing of reformatory process.

A Co-ordinate Bench of this Court in ***Jeet Singh's*** case (supra) has held as under: -

"The petitioner has sought temporary release on two counts firstly, he claims that his parents are of an advanced age and there is no one to take care of them at this old age and secondly, he claims that his house is in need of repairs. The claim on both grounds has been verified by a Municipal Councilor, vide Annexure P-1. Though expression "sufficient cause" as mentioned in Section 3(1)(d) of 1962 Act, has not been defined, but the reasons given by the petitioner for his release on parole will fall within the ambit of "sufficient cause" and therefore, his request is entitled to be accepted."

A perusal of the above-said judgment would show that the plea taken by the petitioner that the parents of the petitioner therein were of an advanced age and there was no one to take care of them, was considered to be a reason to fall within the meaning of "sufficient cause" under Clause (d) of sub section (1) Section 3 of the Act and therefore, the reason furnished by the said petitioner therein was accepted.

To similar effect is the judgment passed by a Co-ordinate Bench of this Court in ***"Narinder Singh @ Nindi Vs. State of Punjab and others"***, reported as ***2020(2) DC (Narcotics) 253***. In the said judgment, it has been observed in para 14 that, in view of the beneficial nature of the statutory provisions made in the Act, which aimed at reformation and rehabilitation of a prisoner, the petitioner therein would be entitled to the grant of parole for socializing with his family members and the same would constitute sufficient cause within the meaning of Section 3(1)(d) of the 1962 Act.

A cumulative reading of the abovesaid judgments would show

that meeting one's family is one of the most important facets of right to life

and thus, the said ground for parole is legal and valid and in accordance with law.

In the present case, in the impugned order, the primary reason given for rejection is that in case, the petitioner is released, then he might indulge in the business of drugs and could disturb the peace in the area. There is no material on the basis of which the said observation have been made. The petitioner is not involved in any other case under the NDPS Act.

A Division Bench of this Court in case titled as "**Gursahib Singh Vs. State of Punjab and others**", passed in **CRWP-867-2021**, decided on 31.05.2022 has held as under: -

"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 be involved in drug trafficking and there are chances of absconding also, 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.

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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 4-1/2 years 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."

A perusal of the abovesaid judgment would show that even in the said case, an adverse report had been submitted against the petitioner therein on the assumption that he would be a threat to peace and may indulge in selling of intoxicant substances and the said assumption was made on the basis of the fact that he was habitual of consuming intoxicants. The Division Bench after considering the facts of the said case observed that the apprehension that the petitioner therein would be again involved in a criminal case and may abscond were mere imaginations of the authorities

was released on parole for a period of four weeks.

A Co-ordinate Bench of this Court in case titled as "**Mohd. Iftkhar @ Kaka Vs. State of Punjab and others**", passed in **CRWP-7999-2022**, decided on 15.09.2022, has held as under: -

"7. A perusal of the impugned order dated 05.08.2022 (Annexure R-1) would show that it is based completely on supposition. There is nothing on record to substantiate as to what inputs were available with the Senior Superintendent of Police, Malerkotla to come to the conclusion that the petitioner would indulge in the business of smuggling of intoxicating substances or would cause a law and order problem if he was released on parole. Thus, the impugned order which is based on the said report is completely non-speaking and non-specific.

8. In the present case, even as per the reply of the State, there is no specific input from any quarter to suggest that the petitioner would indulge in the commission of a similar offence for which he has been convicted or that there would be any law and order problem in case he is granted the concession of parole."

In the present case also, there is no specific input from any quarter to suggest that the petitioner would indulge in the crime for which he had been convicted and thus, the impugned order dated 04.05.2022 having been passed on the basis of surmises and conjectures, deserves to be set aside.

Keeping in view the abovesaid facts and circumstances as well as the law laid down in the abovesaid judgments, the present petition is allowed and the impugned order dated 04.05.2022 is hereby set aside. The petitioner is ordered to be released on parole for a period of eight weeks from the date of release on his furnishing requisite personal and surety bonds to the satisfaction of the District Magistrate concerned, and the said District Magistrate is directed to impose such conditions as may be

parole period is over and to ensure that the temporary release is not misused by securing the bond of mandatory good conduct with a clear stipulation that in case the petitioner commits any offence during his period of temporary release, his release warrants would be cancelled as provided in Rule 4 of Punjab Good Conduct Prisoners' (Temporary Release) Rules, 1963.

(VIKAS BAHL)
JUDGE

December 07, 2022
Davinder Kumar

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