

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(244)

CRWP-6652-2021 (O&M)
Date of decision: - 22.09.2022

Nishan Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vishal Khatri, Advocate, for the petitioner.

Mr. Iqbal Singh Mann, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present Criminal Writ Petition filed under Article 226 of the Constitution of India is for issuance of writ for directing the respondents to release the petitioner on parole for eight weeks for socializing and meeting with his family members under Section 3(1)(d) of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962, as amended up to date.

2. Learned counsel for the petitioner has submitted that the petitioner was convicted in FIR No.25 dated 13.04.2015 under Section 21/29/61/85 of the Narcotic Drugs & Psychotropic Substances Act, registered at Police Station Khemkaran, for a period of 10 years and also in FIR No.26 dated 23.04.2015 under Section 21/61/85 of the Narcotic Drugs & Psychotropic Substances Act, registered at Police Station Khemkaran, District Tarn Taran for a period of 10 years. It is further submitted that the appeals in both the said cases have been admitted and

are pending consideration. It is also submitted that the present petitioner has been granted the concession of suspension of sentence in the appeal, arising out of conviction in FIR No.26 dated 23.04.2015 and that the petitioner had applied for eight weeks' parole before respondent No.5 to meet and socialize with his family members under Section 3(1)(d) of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962, as there is no male member in the family of the petitioner, as his father has already expired and he does not have any brother and thus, the petitioner wanted to take care of and to meet his old aged mother, his wife, one unmarried sister and one minor son and that the case was forwarded by respondent No.5 to respondent No.3-District Magistrate/Deputy Commissioner, Tarn Taran, vide letter dated 05.04.2021 and respondent No.3 directed the respondent No.4-Senior Superintendent of Police, Tarn Taran to look into the matter, vide letter dated 15.04.2021 and respondent No.4 had submitted its report dated 05.05.2021 in pursuance of the same and even though had stated in the report that there is no threat to the State's security and maintenance of public order, yet, respondent No.4 did not recommended the case of the petitioner on the ground that there was no responsible member to take responsibility of the petitioner and on the basis of the same, respondent No.3 rejected the case of the petitioner, vide impugned order dated 16.06.2021 (Annexure P-2). It is submitted that the second reason given in the order was that the petitioner would indulge in smuggling because he is a smuggler. It is submitted that the said observation in the impugned order is based on surmises and conjectures and there is no material to show that the petitioner would indulge in

smuggling, if released. It is contended that there was a panchayatnama (Annexure P-6), which has been signed by the Sarpanch of Gram Panchayat, Mastgarh, Block Valtoha, District Tarn Taran and Namberdar, village Mastgarh, Tehsil Patti, District Tarn Taran in favour of the present petitioner. Learned counsel for the petitioner has stated that the petitioner has been arrested in above-said FIR No.25 on 17.04.2015 and was in custody till 29.07.2016 and thereafter, since 20.08.2021 he has been in custody and he has never misused the same. It is also submitted that co-accused of the petitioner in FIR No.26 had also applied for parole of eight weeks' and a Co-ordinate Bench of this Court was pleased to allow eight weeks' parole, vide order dated 16.12.2021 passed in CRWP-6653-2021. 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**.

3. Learned State counsel on the other hand has opposed the present petition and has submitted that the impugned order has been rightly passed and there is every likelihood that in case, the petitioner is released, then, he would indulge in smuggling and there is no responsible person who has taken the responsibility of the present petitioner.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. The petitioner has been in custody since a sufficient period of

time and has not met his family members. It is the case of the petitioner that he has an aged mother, wife, minor son and unmarried sister and he wishes to meet and socialize with them. In the impugned order, it has been mentioned that as per the letter dated 05.05.2021 of the Senior Superintendent of Police, Tarn Taran, there is no threat to the State security and maintenance of public order in case the petitioner is released. The allegations in the impugned order to the effect that the petitioner can indulge in smuggling, is based on surmises and conjectures and there is no material for recording the said finding. With respect to the fact that there is no person responsible, who had taken the responsibility of the petitioner, the petitioner has relied upon a panchayatnama (Annexure P-6), which has been signed by the Sarpanch of Gram Panchayat, Mastgarh, Block Valtoha, District Tarn Taran and Namberdar, village Mastgarh, Tehsil Patti, District Tarn Taran, who have stated that they are responsible persons and have requested for the release of the petitioner on parole for a period of eight weeks and there is no threat to the peace of the village and have stated that the petitioner would surrender back in jail on time after completing his parole period and that they would take responsibility regarding the same. The co-accused of the petitioner in above-said FIR No.26 had also sought grant of parole for eight weeks, which was opposed by the State primarily on the ground that he may engage in smuggling and a Co-ordinate Bench of this Court vide order dated 16.12.2021 passed in CRWP-6653-2021 was pleased to release co-accused on parole for eight weeks'.

6. 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.

7. 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 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” and therefore, the reason given by the said petitioner therein was accepted.

8. To a 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 the prisoner, the petitioner therein would be entitled to 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.

9. A cumulative reading of the above-said judgments would show that meeting one's family is one of the most important facets of right to life and thus, said ground for parole is legal and valid and in accordance with law.

10. 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 above-said judgment would show that even in the said case, an adverse report had been given 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. From the custody certificate, it was further apparent that the petitioner therein was involved in other cases under the NDPS Act. 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 and accordingly, the impugned order was set aside and the petitioner therein was released on parole for a period of four weeks.

11. Co-ordinate Bench of this Court in case titled as **"Mohd. Ifkhar @ 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."*

12. 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 having been passed on the basis of surmises and conjectures deserves to be set aside.

13. Keeping in view the above-said facts and circumstances as well as the law laid down in the above-said judgments, the present petition is allowed and the impugned order dated 16.06.2021 (Annexure P-6) is hereby quashed. 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 considered necessary to secure the presence of the petitioner in jail after the 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.

September 22, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes