

209

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

CRWP-5419-2022

Date of decision: 15.09.2022

PARAMJIT KAUR

...Petitioner

V/s

STATE OF PUNJAB AND OTHERS

...Respondents

**CORUM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. H.S. Sullar, Sr. DAG Punjab.

DEEPAK MANCHANDA J.

The instant petition has been filed challenging the impugned order dated 28.02.2022 (Annexure P-3) passed by the District Magistrate, Sangrur, District Sangrur under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Vide order dated 27.01.2022 (Annexure P-2) passed by this court in CRWP-11138-2021, the direction was issued to respondent authorities to reconsider the case of the petitioner for grant of parole as per statutory provisions of the Act of 1962, but same has been declined.

2. Aggrieved by the said order declining the prayer of granting parole to the petitioner, the petitioner has again filed this petition seeking the same relief and has sought to quash the order dated 28.02.2022 along with the issuance of a writ in the nature of mandamus directing the respondents for releasing the petitioner for 8 weeks for repairing her house and for taking care of her family members.

3. The pleadings show that petitioner Paramjeet Kaur has been convicted and sentenced vide order dated 11.10.2019 in case FIR No. 98 dated 04.09.2015 registered at police station City Julkan District Patiala for the offense punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter to be referred as 'NDPS Act'). She has been sentenced to undergo rigorous imprisonment for 12 years. Against the said judgment and conviction order, the petitioner had preferred an appeal before this Hon'ble court vide CRA-D-1066 of 2019, the same stands admitted and pending for adjudication. During the pendency of the said appeal, earlier also the petitioner has moved an application seeking her temporary release on parole, the said application was declined by the Addl. District Magistrate vide order dated 25.10.2021 based on the report submitted by Senior Superintendent of Police District Sangrur. The said order of rejection was challenged by filing the CRWP-11138 of 2021 before this court and vide order dated 27.01.2022 this court directed the authorities to reconsider the case of the petitioner for grant of parole as per statutory provision of Punjab Good Conduct Prisoners (Temporary Release) Act 1962 and the rules framed thereunder within 2 weeks. In compliance with the order dated 27.01.2022 passed by this court the issue in hand was re-examined at the end of authorities, which again resulted in the rejection of the prayer made by the petitioner vide impugned order dated 28.02.2022.

4. After issuance of notice of motion, a reply by way of the affidavit dated 12.07.2022 of the Deputy Superintendent of Police, Sub Division, Sangrur on behalf of respondents Nos. 2 and 3 along with Annexure R-1/T was taken on record. The contents of the said affidavit filed by the respondents are perused which reveals that after re-examination of the issue a similar stand has been taken as was taken while declining the prayer of the petitioner vide order dated 25.10.2021 (Annexure P-1), which was challenged in the CRWP-11138-2021, and same had been disposed of vide order dated 27.01.2022.

5. Heard learned counsel for the parties.

6. Learned counsel for the petitioner vehemently argued and has drawn the attention of this Court to the reasons recorded by the District Magistrate Sangrur while rejecting the application of the petitioner and has submitted that despite directions issued by this Court vide order dated 27.01.2022 in CRWP-11138-2021, where the authorities were directed to reconsider the case of the petitioner as per the statutory provisions of Punjab Good Conduct Prisoners (Temporary Release) Act 1962 and the rules framed thereunder has again been rejected by ignoring the statutory provisions of Punjab Good Conduct (Temporary Release) Act 1962, which has resulted into the second round of litigation.

7. Learned State counsel, on the other hand, has submitted that the temporary release of the petitioner on parole is likely to endanger the security of the State and the maintenance of public order as the Superintendent of Police, Sangrur has observed that the petitioner while on parole is likely to jump on parole and indulge in illegal activities. However, the learned State counsel is unable to refute the submission that even while reconsideration of the issue, which has again led to rejection vide impugned order dated 28.02.2022, whether the same has been passed from non-consideration of the statutory provisions contained in the Act of 1962 and the rules framed thereunder where earlier also the order dated 25.10.2021 declining the parole to petitioner challenged in the CRWP-11138-2021, had been set aside as same was also passed on an assumption of facts and entirely on the conjectures ignoring the statutory provisions of the Act of 1962 and the rules framed thereunder.

8. We have given our thoughtful consideration to the matter and have gone through the record with the assistance of learned Counsel for the respective parties. The petitioner as already noticed is 58 years of age and has been ordered to undergo rigorous imprisonment for 12 years consequent to her conviction in the case under the NDPS Act. During incarceration of a prisoner in Jail after conviction, she is entitled to temporary release on

parole which though is a concession and not a right. However, to reform prisoners a periodic temporary release on parole for short durations is necessary. This is a welfare measure in the interest of a prisoner and is considered in terms of Section 3 of Act of 1962. The same is extracted as under:-

'3 Temporary Release of prisoners on certain grounds--

(1)The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section

(2)any prisoner if the State Government is satisfied that-

[(a) a member of the prisoner's family has died; or

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or]

(b) the marriage of the prisoner's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation [on his land or any other land cultivated by him] and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or

[(cc) a lady prisoner is pregnant and is likely to deliver a child; or

(d) it is desirable so to do for any other sufficient cause.

[Explanation- The expression "sufficient cause" includes-

(1) serious damage to life or property of the member of the family caused by any natural calamity; or

(2) critical condition of any member of the family on account of accident; or

(3) delivery of child by the wife of the prisoner.]

[(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), fifteen days;

(b) where the prisoner is to be released on the ground specified in clause (d) of sub-section (1) [eight weeks] and

(c) where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days prior to the date of delivery of child and sixty days after the date of delivery of child]

[(2-A) The total period of temporary release of the prisoner, excluding the release availed of,-

(i) on the death of a family member of the prisoner; or

(ii) by a female prisoner on account of delivery of child, as the case may be,

shall not exceed sixteen weeks, during a calendar year and shall be availed of on quarterly basis:

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is on temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so.]

[Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemics Diseases Act, 1897, the State Government may, by a special notification published in the Official Gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis.]

(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner.

(4) The State Government may by notification authorize

any officer to exercise its power under this section in respect of all or any of the grounds specified therein.

9. Further, the procedure for temporary release has been provided for under Rule 3 of the Punjab Good Conduct Prisoners (Temporary Release) Rules 1963, which read thus:-

'3. Procedure for temporary release, [Sections 3, 4, 10(1), 10(2)(b), 10(2)(d) and 10(2) (e)]

(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who, after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the Inspector-General. The Inspector-General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the Security of State or prejudicial to the maintenance of public order [:]

[Provided that no such application shall be processed by the Superintendent of Jail, unless the prisoners had maintained good conduct after his conviction at least for four months in jail.]

(3) If, after making such enquiry as it may deem fit, the Releasing Authority is satisfied that the prisoners is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant in Form B ordering the temporary release of the prisoner, specifying therein (i) the period of release, (ii) the place or places which the prisoner is allowed to visit during the period of such temporary release, and the amount for

which the security bond and the surety bond shall be furnished by the prisoner in Forms C and D [respectively:] Provided that the amount of the security bond and the surety bond [shall neither exceed rupees two lacs nor it shall be less than rupees fifty thousand in any case, subject, however to the satisfaction of the competent authority in each case]. (4) On receipt of the release warrant the Superintendent of Jail shall inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail to the District Magistrate.

(5) On receipt of the information from the District Magistrate that the necessary bonds have been furnished, the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

(6) The Superintendent of Jail shall also immediately forward to the Officer-in-charge of the Police Station within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the release certificate in Form E. The officer incharge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector-General.

(7) The date of release as well as the date on which the prisoner surrenders himself under sub-section (1) of section 8 of the Act shall be reported by the Superintendent of Jail to the Inspector-General who will inform the Government accordingly.'

10. A perusal of the statutory provision shows that the competent authority may pass an order directing the temporary release of a prisoner. As per the procedure prescribed, the District Magistrate has to verify the facts and grounds on which such temporary release has been requested. In the event, the District Magistrate opposes the temporary release of a prisoner, the grounds prescribed must make out that the prisoner's presence is

dangerous to the security of the State or is prejudicial to the maintenance of public order.

11. The aforesaid fact has been affirmed by a Division Bench judgment of this Court passed in ***Bansi Lal Vs. State of Punjab and Others*** **2016(4) R.C.R. (Criminal)1017**. The relevant paragraph is reproduced below:-

'The term 'Security of the State' out of the expressions of 'law and order', and 'public order' is considered more grave. It may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorist operations engineered by foreign agencies. It can also be affected by the 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 concerned District Magistrates and 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 concerned District Magistrate and/or 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.'

12. Perusal of the impugned order passed by the respondent authority fails to point out the existence of any of the twin aspects, as may justify the opposition by the District Magistrate to the grant of temporary release to a convict. The Hon'ble Supreme Court observed in the matter of 'Banka Sneha Sheela Vs. The state of Telangana, 2021 Vol. 9 SCC 415' that mere contravention of law though may affect 'law and order but it cannot be termed as a public disorder. The act in question must penetrate the community in a manner as would have a severe impact on the community or public at large before it can be termed a public disorder.

13. The repeated rejections, again vide impugned order dated 28.02.2022, is illegal and erroneous in as much as it suffers from the total non-application of mind on the part of the District Magistrate who has ignored the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and mechanically accepted the so-called adverse police opinion without taking into consideration much less even looking at the catalog of certain relevant material facts and circumstances standing in favor of the petitioner emerging from the record. As mentioned in the preceding paras, this Court in several cases before it including the CRWP-11138-2021 and its reported decisions has repeatedly enlightened the authorities as to how the parole applications under the Act of 1962 are to be decided, more particularly when even the police opinion is found to be adverse, and yet the same has consistently failed to engage the due attention of the competent authorities. Now, undoubtedly, the adverse police opinion has certainly some positive, definite relevance, and it must be given its due weightage at the time of considering parole applications, more particularly

at the time when such parole leave is to be granted for the first time after the order of conviction and sentence. But at the same time, the said police opinion standing by itself divorced from other relevant facts and circumstances emerging from the record of the case cannot be mechanically given any undue preference and importance so much to refuse the parole leave which otherwise deserves to be granted. Many times, it is found that the alleged adverse police opinion is only a one-sided picture of some false or sometimes imaginary apprehensions of some interested persons which as stated above clearly stands belied by the consistent good conduct of the prisoner inside and outside the Jail. If things are not seen and examined from this particular angle and perspective, the parole would remain idle on the statute book denying Prison Justice to the deserving accused persons in the Jail.

14. The matter, unfortunately, does not simply rest here as it is a matter of great regret that despite the guidelines given by this Court as to how the parole applications are to be decided by the concerned authorities, particularly in cases where there is adverse police opinion, the same for whatever reasons are found to be just ignored. Looking to the importance of the question involved, viz., "Refusal to take into consideration the directions given by this Court vide order dated 27.1.2022 passed in CWRP -11138-2021, where the direction was issued to reconsider to grant parole in light of statutory provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act 1962, but same was not done and has resulted into the second round of litigation. The parole and furlough Rules are part of the penal and prison reform intending to humanise the prison system. Duty of maintenance of law and order is of course an important duty and the same cannot be disregarded but at the same time, the said duty is not required to be discharged mechanically, as to deny the "prison justice" to the prisoner for parole, which is equally an important duty and cannot be deselected. Needless to mention that the resultant danger to the security of the State or prejudice to the maintenance of public order must bear a direct connection

to the act of temporary release of a convict and should not be a remote outshoot of the release and should certainly not be based upon hypothetical existence of facts and conclusions drawn on conjectures. Such a construction of hypothesis, if allowed, is likely to be extended and applied to every case – thus defeating the statutory objective.

15. Accordingly, the writ petition is allowed. The impugned order dated 28.02.2022 (Annexure P-3), is hereby quashed and set aside, four weeks parole is granted to the petitioner. The respondent authorities are directed for necessary action and compliance.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

Whether speaking reasoned
Whether reportable

Yes/No
Yes/No

15.09.2022
Ajay Goswami