

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRWP-7999-2022 (O & M)****Date of decision: 15.09.2022**

Mohd. Iftkhar @ Kaka

.... Petitioner

V/s

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Hakam Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present criminal writ petition under Article 226 of the Constitution of India read with Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, (for short 'the Act') is for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 05.08.2022 (Annexure P-1) passed by respondent No.2 with a further prayer for issuing a writ in the nature of mandamus directing the respondents to release the petitioner on parole for a period of 08 weeks for repairing his house and looking after his family.

2. The brief facts of the case are that the petitioner, who is a resident of District Malerkotla and is currently confined at Central Jail, Bathinda was convicted and sentenced by the Judge, Special Court, Patiala vide judgment of conviction and order of sentence dated 12.02.2018 in FIR No.96 dated 26.10.2014 under Section 22 of the NDPS Act registered at

Against the said judgment and order of sentence, the petitioner preferred an appeal before this Court vide CRA-S-1018-SB-2018 and the same stands admitted.

The petitioner is said to be in the custody for the last more than 04 years and is undergoing his sentence at Sub Jail, Malerkotla.

The petitioner sought the concession of parole by submitting an application to respondent No.4 i.e. Superintendent of Sub Jail, Malerkotla, District Malerkotla which was forwarded to respondent No.2 i.e. District Magistrate, Malerkotla, and a report was obtained from respondent No. 3 i.e. Senior Superintendent of Police, Malerkotla, District Malerkotla. Based on the said report, the prayer of the petitioner for grant of parole was declined vide impugned order dated 05.08.2022 (Annexure P-1).

3. The learned counsel for the petitioner contends that respondent No.3 i.e. Senior Superintendent of Police, Malerkotla had submitted his report to respondent No.2 i.e. District Magistrate, Malerkotla in which it has been stated that the petitioner could indulge in smuggling intoxicating substances if he was released on parole. It was further stated that there was danger to public order, peace, land and order of the locality if he was granted the said relief. He contends that there is absolutely no evidence available with the respondents to record such findings against the petitioner. No enquiry was conducted by any of the respondents before the impugned order was passed and, in fact, the impugned order is completely non-speaking. He contends that as per Rule 3 of the Punjab Good Conduct Prisoners (Temporary Release), Rules 1963, the Superintendent of Jail should process the application for grant of parole of the convict after he has undergone more than 04 months of incarceration after conviction. Reliance is placed on the

judgment of this Court in “*Bansi Lal versus State of Punjab and others, 2016(4) RCR (Criminal) 1017 (DB)*”.

4. It is contended that the petitioner is ready to give any undertaking that he would abide by all the terms and conditions imposed upon him or any further conditions mentioned in the directions given by the High Power Committee. It is contended that due to the monsoon season, the condition of his (petitioner's) house is deteriorating and he needs to meet his family as well, and therefore, seeks the indulgence of this Court by way of grant of parole.

5. The learned counsel for the State has filed a reply dated 15.09.2022 by way of affidavit of Parduman Taipur, Superintendent, Sub Jail, Malerkotla, on behalf of respondents No.1 to 4. As per the said reply, the petitioner's prayer for parole was declined for the following reason:-

“As per the report obtained from the SSP, Malerkotla, Prisoner Mohd. Iftkhar can indulge in the business of smuggling of intoxicant substances, if released on parole and by which the young generation of Punjab State can be destroyed and there is also danger to the law and order, and to the State Security. By taking into consideration said factors he had not recommended the parole release of prisoner Mohd. Iftkhar.

So by agreeing to the report of SSP, Marlerkotla the parole release f the Prisoner Mohd. Iftkhar sonof Mohd. Iqbal is not recommended and the case is consigned to record.

*Sd/-
District Magistrate,
Malerkotla”*

6. I have heard the learned counsel for the parties.

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.

9. In view of the above, I find merit in the present petition and the same is allowed. The impugned order dated 05.08.2022 (Annexure P-1) stands quashed. The petitioner is ordered to be released on parole for a period of 04 weeks i.e. w.e.f 19.09.2022 to 16.10.2022. On the expiry of the period of parole i.e. on 17.10.2022, the petitioner is directed to surrender before the Jail Authorities by 6.00 p.m.. However, the parole shall be subject to the following terms and conditions:-

(i) The petitioner shall furnish a telephone/cell phone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also furnish information of his telephone/cell phone number to the SHO of the police station concerned.

(ii) Immediately upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.

(JASJIT SINGH BEDI)
JUDGE

September 15, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No