

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

Criminal Writ Petition No.9977 of 2020(O&M)

Date of Decision: March 14, 2022

Abhijeet Singh @ Ankur Likhari

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Nandan Jindal, Advocate for the petitioner.

Mr.B.S.Sewak, Additional AG, Punjab.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 24.09.2020 (Annexure P-4) passed by respondent No.3 - District Magistrate, Amritsar, whereby the application for release of the petitioner on Furlough has been rejected. It has also been prayed that the respondents be directed to release the petitioner on furlough.

The petitioner is undergoing imprisonment for life in case FIR No.25 dated 15.01.2010 under Sections 302/307/148/149 IPC and Sections 25/27 of the Arms Act, Police Station Civil Lines, Amritsar after his conviction by the Trial Court. He is stated to have already undergone more than 11 years of actual sentence.

The petitioner submitted an application to respondent No.4 - the Superintendent, Central Jail, Patiala for release on furlough for three weeks. It was forwarded to the District Magistrate, Amritsar. When no

decision was taken thereupon, the petitioner filed CRWP No.7093 of 2020, which was disposed of on 15.09.2020 with a direction to respondent No.3 to consider and decide the application in accordance with law within one month.

The respondent No.3 vide the impugned order has rejected the prayer of the petitioner. Hence, this petition.

In the impugned order, it is stated that the petitioner had spent his parole from 27.08.2019 to 23.10.2019. Further it is stated that there are 34 cases against the petitioner. He is very smart and criminal minded person and is a leader of Likhari Gang. If he is released on parole, then he can commit another crime with the connivance of his Gang and can cause harm to the maintenance of public order. There is danger to the state security if the petitioner is released on parole and also threat of maintenance of public order.

The case of the petitioner is that although he is fully eligible for *Furlough* in terms of Section 4 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Prisoners Act'), but respondent No.3 vide the impugned order has rejected his request erroneously considering it a case of parole.

On 03.12.2021, the Ld. State Counsel had sought time to seek instructions and file an affidavit as to whether the petitioner has been acquitted in 31 cases and not involved in any jail offence.

In compliance to above, short reply by way of affidavit of Ravinderpal Singh, PPS, Deputy Superintendent of Police, Attari, Amritsar Rural has been filed. It states that as per the report submitted by SHO of

Police Station Kamboj, Amritsar Rural, the petitioner has been convicted in two FIRs and acquitted in 24 FIRs. 07 FIRs are pending for trial and 01 FIR is under investigation, while 01 FIR was sent as untraced. He is not involved in any jail offence for the last three years. The reply further states that keeping in view the occurrences which have occurred during recent past between rival gangs of gangsters in different areas of Punjab, the petitioner's release on furlough or parole may prove very dangerous as it is apprehended that the petitioner while joining his Gang can commit some big incident and can breach law and order and can also pose a threat to security of the State and maintenance of law and order.

Learned counsel for petitioner has argued that earlier the petitioner has availed the parole six times and he always surrendered on time. Thus, the apprehensions expressed in the impugned order are without basis. The petitioner also does not fall in the category of 'Habitual Offender' as defined in Clause (3) of Section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952.

Heard Ld. counsel for the parties and perused the records.

Section 4 of the Prisoners Act deals with the release of prisoners on Furlough, which reads:

“4. Temporary release of prisoners on furlough.- (1) The State Government or any other officer authorized by it in this behalf may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who:-

(a) has, immediately before the date of his temporary release, undergone imprisonment for a period of three

years, excluding remissions; and

(b) has not during such period committed any jail offence and has earned at least three annual good conduct remissions;

Provided that nothing herein shall apply to a prisoner who-

(i) is a habitual offender as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reforms) Act, 1952, or

(ii) has been convicted of robbery or dacoity or such other offence as the State Government may, by notification, specify.”

As per Clause (3) of Section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, 'habitual offender' means *a person (a) who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction; and (b) who has, as a result of such convictions suffered imprisonments at least for a total period of twelve months.*

A reading of the above provisions make it clear that the petitioner cannot be termed as 'habitual offender' to debar him to get the benefit of furlough earned by him during his sentence by maintaining good conduct.

The other ground mentioned in the impugned order that there will be danger to the state security if the petitioner is released and also threat

