

CRWP-8666 of 2022

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

CRWP-8666 of 2022
Reserved on: 17.11.2022
Pronounced on: 21.11.2022

Govinda

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -

Mr. S.S. Rana, Advocate,
for Mr. Arvind Kumar Sharma, Advocate,
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

NAMIT KUMAR, J.

The instant petition has been preferred by the petitioner under Article 226 of the Constitution of India for issuance of directions to the respondents to grant parole for eight weeks, who is presently undergoing sentence at Central Jail, Ludhiana under Section 3(1)(c) read with Section (d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act') for meeting and looking after his minor children, old aged ailing widow mother and for repairing his house. He has further challenged the order dated 13.11.2021 (Annexure P-1) whereby his application for grant of eight weeks' parole has been rejected by the Senior Superintendent of Police, Shaheed Bhagat Singh Nagar.

Briefly stated, the facts of the case are that petitioner was arrested in FIR No.26 dated 16.03.2019 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the

CRWP-8666 of 2022

NDPS Act') registered at Police Station Sadar Banga and he was convicted and sentenced to undergo rigorous imprisonment for ten years vide order dated 25.03.2021, therefore, he is presently undergoing 10 years imprisonment. The peitioner has filed CRA-S-785 of 2021 before this Court against his conviction order dated 25.03.2021 passed by the trial Court, which is pending adjudication. It is further averred in the petition that the petitioner has already undergone more than 03 years 06 months of sentence. The work and conduct of the petitioner remained good and satisfactory and he has not committed any jail offence. Further, the petitioner has not earlier availed concession of parole/furlough during his long custody in jail. It is further averred that it has been held by this Court that after undergoing three years sentence, a prisoner requires some recess and he should be allowed to meet his family members. Moreover, after undergoing three years sentence a prisoner is entitled to avail parole for eight weeks, if he maintains good conduct in jail. Father of the petitioner has already expired and he has left behind his wife, two minor children who are living with his old aged mother who often remains ill and there is no able member in the family to take her to the hospital for medical treatment. It is relevant to mention here that the petitioner has to make the necessary arrangements of the funds as he wants to repair his house and he further wants to meet his family members who are passing through difficult days of their life because there is no earning member in the family of the petitioner. The petitioner had applied for parole for eight weeks under the Act and his case was duly recommended by respondent No.3 for holding inquiry from the local police through the concerned Senior Superintendent of Police.

CRWP-8666 of 2022

However, the said claim of the petitioner has been rejected by the Senior Superintendent of Police, Shaheed Bhagat Singh Nagar, vide order dated 13.11.2021 (Annexure P-1) by stating “if Govinda (petitioner) is released on parole then he can start selling the drugs again.” Reasoning for rejecting the claim of the petitioner in the impugned order dated 13.11.2021 is as under: -

“On the subject cited above report has been received from the office of Deputy Superintendent of Police, Sub-Division, Banga. According to the report, the convict Govinda son of Jasvir Ram, is resident of village Bandian, P.S. Sadar Banga, District S.B.S. Nagar whose name, address, community and nationality are correct. During inquiry, it was found that one FIR No.136 dated 08.12.2018 u/s 21-61-85, P.S. Sadar Banga under N.D.P.S. Act was registered against Govinda son of Jasvir Ram in which challan was presented in the Hon'ble court on 27.03.2019 and another F.I.R. No.26 dated 16.03.2019 u/s 21, 22-61-85 NDPS Act, was registered at P.S. Sadar Banga, District S.B.S. Nagar in which he was convicted and sentenced to undergo 10 years by the Hon'ble court and he is serving his sentence in Central Jail Ludhiana. In case the aforesaid convict Govinda son of Jasvir Ram is released on parole then there is no threat to the security of state and maintenance of public order but it has been found from intelligence and secret inquiry that if Govinda son of Jasvir Ram is released on parole then he can start selling the drugs again.”

It has further been averred that even Superintendent, Central Jail, Ludhiana – respondent No.3 has issued reminder letter dated 07.01.2022 (Annexure P-2) to District Magistrate, Shaheed Bhagat Singh Nagar – respondent No.2 for considering his case for grant of parole expeditiously as per the provisions of law but now about one year nine

CRWP-8666 of 2022

months have elapsed but respondents have failed to consider his case for grant of parole whereas the same was to be considered within one month. It has further been averred that the Village Gram Panchayat Thandian has also issued certificate (Annexure P-3) certifying that the petitioner is resident of the said village and also recommended that the petitioner be released on interim bail/parole for eight weeks and further they have no objection in case he be released on interim bail/parole and there is no apprehension to the maintenance of public peace, law and order.

Upon notice, short reply dated 14.10.2022 by way of affidavit of Shiraj Singh Nandgarh, Superintendent of Police, Central Jail, Ludhiana, has been filed on behalf of respondents-State, wherein averments made in the impugned order have been reiterated and it has been stated that the petitioner is not entitled for grant of parole for eight weeks and it is prayed that writ petition be dismissed.

In support of his contentions, learned counsel for the petitioner has relied upon the judgment rendered by a Division Bench of this Court in ***Jassa Singh @ Jassa Vs. State of Punjab, 2016(5) RCR (Criminal) 522*** as well as judgment of a Co-ordinate Bench of this Court in ***CWP No.19340 of 2019 titled as Manjit Singh @ Laddu Vs. State of Punjab and others, decided on 02.09.2019*** and has submitted that mere likelihood of indulging in trade of drugs would not be a sufficient ground to decline temporary release on parole as mere apprehension cannot be considered as threat to the security of the State or maintenance of public order.

On the other hand, learned State counsel submits that since the petitioner was convicted in case FIR No.136 dated 08.12.2018 under

CRWP-8666 of 2022

Section 21 of the NDPS Act and sentenced to undergo rigorous imprisonment for one month and to pay a fine of ₹1,000/- under Section 21 of the NDPS Act and although he has undergone actual sentence, there is every possibility that the petitioner will again indulge in selling contraband in case he is released on parole.

I have heard learned counsel for the parties and perused the record.

Perusal of impugned order dated 13.11.2021 (Annexure P-1) would show that the claim of the petitioner has been rejected on the ground that if the petitioner is released on parole then he can start selling the drugs again as earlier he was involved in another case under the NDPS Act in which he was convicted and has undergone sentence and at present he is undergoing sentence in FIR No.26 dated 16.03.2019 under Section 21, 22 of the NDPS Act and if he comes out on parole then he will engage in selling the drugs.

The temporary release of prisoner for good conduct is governed by the Act. The only embargo upon the release of the prisoner is laid down in Section 6 of the Act, which is reproduced as under:-

"[6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released. Notwithstanding anything contained in sections 3 and 4,--

(i) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and

(ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer

CRWP-8666 of 2022

authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order".

Section 6 of the Act, came up for consideration before a Division Bench of this Court in Jassa Singh @ Jassa's case (supra). After noticing the provision, the Division Bench held as under:-

“7. In terms of the above Section 6 (ii) of the Act, a prisoner is not entitled to be released under the Act, if on the report of the District Magistrate, where consultation with him is necessary the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or maintenance of public order. Temporary release of a prisoner on parole or furlough as the case may be can be denied if his release is likely to endanger the security of the State or the maintenance of public order. For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

The expression 'law and order' and 'public order' came up for interpretation before a Division Bench of this Court in ***Bansi Lal Versus***

State of Punjab and others, 2016 (4) RCR (Criminal) 1017 wherein it was

CRWP-8666 of 2022

held as under:-

“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.”

Another Division Bench of this Court in ***Ram Chander Vs. State of Punjab and others 2017(3) RCR (Criminal) 340*** held that the likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not to be taken as an apprehension of a threat to the security of the State or maintenance of public order.

In ***Simrandeep Singh Vs. State of Punjab [CWP No.2261 of 2018]***, decided on 17.04.2018, after review of the case law, this Court held that there has to be material with the respondents for entertaining the apprehension that if the convict is released on parole, he will cause danger to the public peace.

In ***Manjit Singh @ Laddu's*** case (supra), after examining the

CRWP-8666 of 2022

cases in which the petitioner was involved, this Court held that apprehension of the State that the convict may indulge in selling of intoxicant substance is hypothetical and to allay the apprehension, adequate conditions can be imposed upon him and his conduct can be kept under watch in case parole is granted.

In the backdrop of the case law discussed above, facts of the present case may be examined. There is nothing on record to show that conduct of the petitioner in jail has not been found good. The petitioner has never been released on parole earlier. He was involved in FIR No.136 dated 08.12.2018 under Sections 21, 22 of the NDPS Act and he has already undergone the sentence awarded to him. Further, no other case is pending against him and therefore, the likelihood of his involvement in similar offence while on parole is not to be taken as an active and real apprehension of threat to the security of the State or to the maintenance of public order as held in *Manjit Singh @ Laddu's* case (supra). Moreover, the respondents have not placed on record any material to support the apprehension. Merely on the basis of an apprehension, benefit of parole cannot be denied in view of the settled proposition of law.

Petitioner has sought temporary release on two counts; firstly, he claims that he is to meet and look after his minor children, old-age ailing widow mother and secondly, for repairing his house. The claim on both counts has been verified by Sarpanch, Gram Panchayat Village Thandian, District Shaheed Bhagat Singh Nagar, vide panchayatnama dated 04.09.2022 (Annexure P-3). Though expression “sufficient cause” as mentioned in Section 3(1)(d) of the Act, has not been defined, but the

CRWP-8666 of 2022

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.

As a consequence of the above discussion, the writ petition is allowed, the impugned order dated 13.11.2021 (Annexure P-1) is hereby quashed. The petitioner is ordered to be released on parole for a period of eight weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be 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 and 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.

21.11.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes