

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

208

**CRWP-11138-2021
Date of decision: 27.01.2022**

PARAMJIT KAUR

....Petitioner

Versus

STATE OF PUNJAB AND ORS

...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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

Mr. A.S. Sandhu, Additional AG Punjab.

VINOD S. BHARDWAJ. J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. The instant petition raises a challenge to the order dated 25.10.2021 (Annexure P-1), passed by the office of District Magistrate, Sangrur, whereby application of the petitioner for temporary release under the Punjab Good Conduct Prisoners (Temporary Release) Act 1962, and the Rules framed thereunder has been dismissed.

3. Learned counsel appearing on behalf of the petitioner has drawn the attention of the Court to the reasons recorded by the Additional District Magistrate, Sangrur, while dismissing the application of the petitioner, which are extracted as under:-

'As per the order dated 26.04.2010 passed in CRM-M-34013 of 2009 of the Hon'ble Punjab and Haryana High Court and Rule 3(2) of the Punjab Good Conduct Prisoners (Temporary Release

Rules) 1963 and after perusing the report of the SSP Sangrur it has been found that prisoner Paramjit Kaur is serving the sentence of 12 years at New District Jail Nabha in case FIR No.98 dated 04.09.2015 under section 15/61/85 of NDPS Act P.S. Julkan District Patiala. The recovery of 2 quintal 40 kg of poppy husk was recovered from the prisoner Paramjit Kaur in the said case. This shows that prisoner Paramjit Kaur is doing the business of selling intoxicant substances. Said prisoner Paramjit Kaur was earlier involved in case FIR No.282 dated 06.12.2008 under section 15 of the NDPS Act, P.S. City Sangrur District Sangrur. In the said case recovery of 3 Kg of poppy husk was effected from her. It is obvious that she will have contacts with the Drug smugglers. If she will be released on parole then she can maintain contact with the Drug Smuggler and can sell intoxicant substances. The drug addicts can commit any crime to fulfill their craving of drugs, because of which there can be danger to the life, liberty of the other people and to the security of the State. So by keeping into consideration public interest and security of the State and also by aggrieve to the report of the SSP Sangur, the parole release of Paramjit Kaur Daughter of Jangir Singh wife of Gurjant Singh is not recommended. The case be consigned to the office record.

This order has been passed in compliance of the order dated 22.10.2021 passed by Hon'ble District Magistrate, Sangrur.'

4. It is argued that the reasons given by the concerned authority are bereft of any merit. The same are conjectural and are not supported or substantiated in material particulars. The order was assailed as having been passed in a mechanical manner without pointing out as to how the grant of parole to the petitioner can be a danger to the security of the State or public order.

5. Learned State counsel, on the other hand, has drawn attention to the averments contained in the response filed on behalf of the State. Reference was made to following paras:-

'Preliminary Submission:

.....

3. That the District authority are responsible for maintaining law and order, peace and harmony in their respective district, the District Magistrate Sangrur has rejected the parole case of the above-mentioned petition vide his office Letter No.2187-2191/Peshi D.C. Dated 25.10.2021 after receiving the adverse recommendation report from the office of Senior Superintendent of Police, Sangrur vide their office Letter No.9143/C-3 dated 26.06.2021 in which Senior Superintendent of Police, Sangrur has stated that the petitioner can indulge in smuggling of drugs if released on parole and she can ruin the lives of youngsters by selling the intoxicant. The said addicts can create public nuisance and can cause harm to the public property and there can be danger to public maintenance, law and order of the State and Country and can be threat to the security of the Country.

Reply On Merit:-

.....

6. That in reply to the contents of the Para No.6 of the petition it is submitted that as per the guidelines issued by the High Powered Committee on dated 02.05.2020, the convicts sentenced under NDPS Act are entitled for parole only if they have been convicted for up to 05 years, with or without fine, should not have any other case pending against them; and must have completed at least 75% of the total sentence. The concerned part of the guidelines issued by the High Powered Committee on dated 02.05.2020 are produced here, ***'Convicts in NDPS case who have been convicted for upto 05 years, with or without fine, should not have any other case pending against them; and must have completed at least 75% of the total sentence. In very important cases, inputs from the concerned police district/units may be taken before release on parole.'***

6. Learned State counsel, however, does not refute the submission that the order passed by the Additional District Magistrate, Sangrur is conjectural in nature and is based on hypothesis.

7. We have considered the rival submissions made on behalf of the respective parties by their counsel and have gone through the record with their assistance.

8. Temporary release of the prisoners is considered in terms of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 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 temporary release of a prisoner. As per the procedure prescribed, the District Magistrate has to verify 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 State or is prejudicial to the maintenance of public order.

11. Perusal of the impugned order passed by the respondent authority fails to point out 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. 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 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 as a public disorder.

12. A perusal of the impugned order shows that the District Magistrate has based the order on an assumption of facts and is entirely conjectural. Such an approach to determine the right of a convict for consideration under the Punjab Good Conduct Prisoners (Temporary Release) Act 1962 defeats the very statutory

object. An order must be founded on facts as they exist and not on hypothesis. There was no valid basis in the order passed by the Additional District Magistrate, Sangrur for concluding how temporary release of the petitioner would cause public disorder. Needless to mention that the resultant danger to security of State or prejudice to maintenance of public order must bear a direct connect 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. Temporary release is a concession extended by State upon a convict displaying good conduct. The concession aims to instill a purpose for a convict to reform and rewards reformatory conduct. Temporary release only helps to determine whether the convict has reformed or not. Ministerial denial of such consideration leaves no motivation for improvement. Such mechanical determination is thus contrary to statute and should not subsist.

13. Further, insofar as reference to averments in Para 6 of the reply on merit is concerned, we find that the said explanation is an improvement. No such reason or discussion is born out in the impugned order. The State cannot improve upon its case than what has been recorded in the impugned order.

14. Under the given circumstances, we find that the impugned order suffers from non-consideration of the statutory provisions contained in the Act of 1962 and the Rules framed thereunder and has been passed in a mechanical manner and on conjectures and surmises.

15. The order dated 25.10.2021 (Annexure P-1), passed by the Additional District Magistrate, Sangrur is thus set aside and the respondent authorities are

directed to reconsider the case of the petitioner for grant of parole as per the statutory provisions of the Punjab Good Conduct (Temporary Release) Act 1962 and the Rules framed thereunder, within a period of 02 weeks from the receipt of copy of this order.

Disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

27.01.2022
S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>