

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

CRWP-1687-2021

Date of Decision: March 10, 2023

Inderpal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Mikhail Kad, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

This criminal writ petition has been filed seeking issuance of an appropriate direction especially in the nature of mandamus to the official respondents to release the petitioner on parole for six weeks in case FIR No.69 dated 22.08.2017, registered at Police Station Sherpur, District Sangrur, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act').

2. It is revealed that petitioner was convicted in the above said case vide judgment dated 05.02.2020. He was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of ₹1,00,000/- with default sentence of 2 years. He applied for parole. Said request has been declined by the respondent N: 2 vide impugned order dated 21.01.2021 (Annexure P2).

3. According to the petitioner, his mother is quite old. His wife has given birth to a girl child, who is now 11 months old (*at the time of filing the petition*). Petitioner also has one minor son and two daughters.

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He has to look after his family and so made a request for releasing him on parole. Petitioner further submits that as many as six FIRs are lodged against him and that his parole application has been dismissed on the ground that there is threat to the security of State and there are chances of breach of case. It is contended that report submitted by the Senior Superintendent of Police in this regard is merely based on apprehension without any reasons or material. The parole application has been dismissed by the District Magistrate, Sangrur, vide impugned order dated 21.01.2021 (Annexure P-2).

4. In the reply submitted by way of affidavit of Shri Paramjit Singh, Deputy Superintendent of Police, Sub Division Dhuri, District Sangrur, on behalf of respondent Nos.1 to 3, it is contended that it emerged during inquiry that petitioner is involved in six cases, out of which he has been acquitted in one case and has been convicted in two cases both under the provisions of NDPS Act. He is facing trial in three other cases pertaining to Excise Act. It is submitted further that in case, petitioner is released on parole, then there is every possibility that he will again join the activities of drug peddling and so, there is threat to the State security and it is because of the said report submitted by the police that his parole application was rejected.

5. I have considered submissions of both sides and have perused the record.

6. Except for the fact that petitioner was involved in six other cases, three under the Excise Act and three under the NDPS Act, out of which he has already been acquitted in one case under the NDPS Act, there was no material for coming to the conclusion that releasing the

petitioner on parole was likely to create a law-and-order problem or a threat to peace, harmony and security to the State.

7. As observed by this Court in case of **“Narinder Singh @ Nindi v. State of Punjab and others”**, 2020(2) DC (Narcotics) 253, beneficial nature of the statutory provisions made in 1962 Act are aimed at reformation and rehabilitation of the prisoners. A prisoner is entitled to grant of parole not only in the event of illness of family members but also for the purpose of socializing with his family members, which is sufficient cause within the meaning of Section 3(1)(d) of 1962 Act.

8. However, the question is as to whether rejection of the application of the petitioner for grant of parole on the ground that same is likely to endanger the security of the State and maintenance of public order, is justified.

9. Section 6 of the 1962 Act provides the cases, where consultation with District Magistrate is not necessary or where prisoners are not to be released. It reads 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 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.”

10. In ***Jassa Singh @ Jassa Vs. State of Punjab 2016 (5) RCR***

(Criminal) 522 a Division Bench of this Court observed 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 behavior and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

11. In ***“Bansi Lal Versus State of Punjab and others”, 2016 (4)***

RCR (Criminal) 1017 another Division Bench of this Court observed as under: -

“15. 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 terrorists operations engineered by foreign agencies. It can also be effected by 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. In “**Jugraj Singh @ Bhola Vs. State of Punjab and other**”, **2010 (25) RCR (Criminal) 138**, another Division Bench of this Court observed as under: -

“.....In our opinion, the release of a convict on parole is a wing of reformatory process. Section 3 of the Act has been enacted as a

reformative measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined to him.....”

13. In “**Ram Chander Vs. State of Punjab and others**”, 2017(3) **RCR (Criminal) 340**, it has been held that mere likelihood of committing crime is not be taken as an apprehension of a threat to the security of the State or maintenance of public order. In **Kuldeep vs. Sate of Haryana 2019 (4) RCR (Criminal) 522**, it has been held by this court that involvement of petitioner in various cases or his chances of absconding is no ground to deny parole.

14. In the present case, application of the petitioner for grant of parole has been rejected on the ground that in case the petitioner is released on parole, there will be danger to security of the State and maintenance of public order but the respondents have not placed on record any material to substantiate these grounds of rejection. Merely reproduction of the language of the statute without any supportive material will not furnish a valid ground for rejection of the application of the petitioner for grant of parole.

15. Section 2(aa) of the 1962 Act which defines hardcore prisoner reads as under: -

“(aa) “hardcore prisoner” means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with Section 302 of the Indian Penal Code, 1860

(ii) an offence punishable under Section 14 of the Protection of

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Children from Sexual Offences Act, 2012.”

16. The petitioner, not having been convicted and sentenced under the above-said penal provisions, does not fall under the definition of hardcore prisoner.

17. Apprehension expressed by Ld. State counsel on behalf of the respondents that the petitioner may commit similar offence during the period of parole is hypothetical. To allay any such apprehension, adequate conditions can be imposed upon the petitioner at the time of his release on parole and his conduct can be kept under watch.

18. In view of the above discussion, the petition is allowed and the impugned order dated 21.01.2021 (Annexure P-2) is hereby quashed. The petitioner is ordered to be released on parole for a period of six weeks from the date of release on furnishing of requisite personal and surety bonds to the satisfaction of the District Magistrate concerned, who is directed to impose such conditions as may be considered 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 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.

March 10, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No