

CRWP-1256-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.232

Case No. : CRWP-1256-2023

Date of Decision : May 09, 2023

Gurbaksh Singh Petitioner
vs.
State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA.

HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Anmol Rattan Sidhu, Senior Advocate
with Ms. Tejaswini, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

* * *

GURBIR SINGH, J. :

1. Prayer in this petition is for setting aside order dated 27.12.2022 (Annexure P-1), whereby prayer to grant parole for a period of eight weeks under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as – the Punjab Act No.11 of 1962), was rejected, with a further prayer for grant of eight weeks' parole to the petitioner under Section 3(1)(aa) of the Punjab Act No.11 of 1962.

2. The petitioner was tried as accused in case FIR No.31 dated 30.03.2014, under Sections 302, 341, 392, 506, 120-B, 148, 149 IPC and Sections 25, 27 of the Arms Act, registered at Police Station Jaitu, District Faridkot, along with other persons. Vide judgment dated 16.11.2021 passed by learned Additional Sessions Judge-I, Faridkot (Annexure P-2), the petitioner was convicted under Section 302/34 IPC and was ordered to

undergo imprisonment for life and to pay fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

3. Counsel for the petitioner has submitted that the petitioner sought parole for eight weeks in order to meet his mother who was suffering from Burst Acute Appendicitis with Peritonitis and Shock. A copy of Medical Certificate of his mother has been annexed with this petition as Annexure P-3.

4. Respondent no.2 i.e. Deputy Commissioner-cum-District Magistrate, Faridkot rejected the claim of the petitioner vide order dated 27.12.2022 (Annexure P-1) on the ground that the petitioner is a “**A-Category Gangster**” and is having rivalry in the village. Upon coming on parole, he can resort to altercation and commit other crime. There was apprehension that the petitioner, after enjoying parole, may not return to jail and is in danger of his jumping parole. There was fear of him causing disturbance of peace and security to the State.

5. Counsel for the petitioner has contended that respondent no.2 did not verify from the Panchayat whether any element or apprehension of unrest existed in the village if the petitioner was to be released on parole. The Gram Panchayat of village of the petitioner has issued a Panchayatnama (Annexure P-4) and recommended to grant eight weeks’ parole to the petitioner. Perusal of the Panchayatnama reflects that the petitioner is the only living male member as his brother and father have expired and petitioner is required to take care of his ailing mother as his mother has met with an accident and has suffered multiple blunt injuries and head injury.

Her medical certificate issued by the concerned doctor has been annexed as

(Annexure P-5). There is no such apprehension of unrest in the village if the petitioner is released on parole. The impugned order was passed by respondent no.2 in the most mechanical manner without any application of mind and without giving any cogent reasons. The factum of ill health of his mother has not been taken into consideration in any manner. It has further been submitted that the petitioner was arrested in the year 2017 and he is in custody since then. In support of his contentions, learned counsel for the petitioner has relied upon CRWP 3196 of 2022 (O&M) titled Mahammad Shehbaz vs. State of Punjab & Ors. and CRWP 8505 of 2022 titled Karamjit Singh vs. State of Punjab & Ors., where the petitioners in the said cases were given benefit of parole to meet their families.

6. Status report by way of affidavit of Gurdeep Singh, PPS, Deputy Superintendent of Police, Sub Division Jaitu, District Faridkot along Custody Certificate has already been filed on behalf of respondent-State, which is ordered to be taken on record.

7. Learned State counsel has opposed the prayer made by learned counsel for the petitioner submitting that there was history of blood-shed due to rivalry between two families, which had resulted in the murder of Ranjit Singh – brother of the petitioner and then, to take revenge of death of his brother, the petitioner killed two innocent people of the opposite party. After registration of FIR, the petitioner had absconded and was declared Proclaimed Offender. He was brought before the law only after a period of more than 3½ years. The possibility of his again fleeing from justice, if released on parole, is very high. Moreover, the petitioner is involved in many other cases and out of said cases, 04 cases are inter-alia under Section

302 IPC, 05 cases are inter-alia under Section 307 IPC, 02 cases under Section 174-A IPC and 02 cases are under Section 52-A of the Prison Act.

8. We have heard the submissions of learned counsel for the parties.

Section 3(1)(aa) of the Punjab Act No.11 of 1962 is 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) xx xx xx xx
(aa) husband or wife or son or daughter or
father or mother or brother or sister or
grand-father or grand-mother or grand-son
or grand-daughter or father-in-law or
mother-in-law of the prisoner is seriously
ill; or]
xx xx xx xx”

9. The petitioner has placed on file Medical Certificate dated 19.07.2022 of his mother (Annexure P-3), which reads as under :-

“TO WHOM IT MAY CONCERN

Certified that Sukhjinder Kaur 59 year old w/o Gurcharan Singh r/o Gumti Khurd/Sewewala, Jaitu, Faridkot, Punjab, India is suffering from Burst Acute Appendicitis with Peritonitis and Shock. Her condition is serious. She has expressed desire to see her son Gurubaksh Singh. She needs

hospitalisation and her son should remain present during her treatment and for her looking after her.

*Managing Director,
Monga Nursing Home,
Faridkot Road, Kotkapura.”*

10. Learned counsel for the petitioner has also placed on the file Medical Certificate dated 21.01.2023 (Annexure P-5) of mother of the petitioner, which reads as under :-

“Medical Certificate

Certified that Ms. Sukhjinder Kaur wife of Gurcharan Singh resident of Gumti Khurd age 65 met with accident. Multiple blunt injuries and head injury. Pt. is unconscious. Police rept. sent to police station Nahian Wala.

*Sd/-
Dr. Bija Mall,
MBBS R.No.28431(Pb)
Sukhmani Nursing Home
GONIANA-151201
Distt. Bathinda”*

11. No other medical record of that period has been placed on the file.

12. “Seriously ill” means an illness that is life threatening or that will cause irreversible adverse consequences to human health. In other words, it can be said that it has a significant potential to become life threatening or to cause irreversible adverse consequences to human health. In the absence of entire medical record, it cannot be said that the mother of the petitioner is seriously ill.

13. In case Asfaq vs. State of Rajasthan and others – Civil Appeal No.10464 of 2017, reported as 2017 AIR (SC) 4986, decided on 11.09.2017, where issue pertained to grant of parole, the Hon'ble Apex Court discussed the theory of Frank Exner, a noted Criminologist and Sociologist. Para nos.21 and 22 of the said judgment are as under :-

“21) It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as “recidivism” reflects the fact that the correctional therapy has not brought in the mind of the criminal. It also shows that criminal is hardcore who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits.

22) We are not oblivious of the fact that there may be hard core criminals who by reason of their crime and the methods of dealing with the crime, form associations, loyalties and attitudes which tend to persist. There may be even peer pressure when such convicts are out to commit those crimes again. There may be pressure of ostracised from delinquent groups which may lead them to commit the crime again. Persistence in

criminal behaviour may also be due to personality traits, most frequently due to pathological traits of personality, such as mental defectiveness, emotional instability, mental conflicts, ecocentrism and psychosis. In regard to relapse or recidivism, Frank Exner, a noted criminologist and sociologist, points out that the chances of repeating increase with the number of previous arrests and the interval between the last and the next offence becomes shortened as the number of previous crimes progresses 6. The purpose of the criminological study is the prognosis of the improvable occasional offenders and that of the irredeemable habitual offender and hardcore criminal. To differentiate the recidivists from non-recidivists and dangerous and hard-core criminals from occasional criminals had been enumerated by Exner in the following flow-sheet:

- (i) Hereditary weakness in the family life.*
- (ii) Increasing tempo of criminality.*
- (iii) Bad conditions in the parental home.*
- (iv) Bad school progress (especially in deportment and industriousness).*
- (v) Failure to complete studies once begun.*
- (vi) Irregular work (work shyness).*
- (vii) Onset of criminality before 18 years of age.*
- (viii) More than four previous sentences.*
- (ix) Quick relapse of crime.*

- (x) *Interlocal criminality (mobility).*
- (xi) *Psychopathic personality (diagnosis of institutional doctor).*
- (xii) *Alcoholism.*
- (xiii) *Release from institution before 36 years of age.*
- (xiv) *Bad conduct in the institution.*
- (xv) *Bad social and family relations during period of release.*

At the same time, as criminality is the expression of the 'symptom' of certain disorder in the offenders, they can be easily reformed if they are rightly diagnosed and correct treatment is administered to them."

14. Adverting to the case in hand, the petitioner is also convicted in four other cases, details whereof, as mentioned in Custody Certificate, read as under :-

1. *FIR No.26 dated 09.04.2013, under Sections 307/395/325/323/148/149 IPC, registered at Police Station Jaitu, District Faridkot.*
2. *FIR No.186 dated 21.08.2017, under Sections 307/411 IPC and Section 25 of the Arms Act, registered at Police Station Canal Colony, District Bathinda.*
3. *FIR No.323 dated 03.08.2018, under Section 174-A IPC, registered at Police Station City, Dabwali.*
4. *FIR No.21 dated 29.01.2021, under Section 52-A of the Prisons Act, 1894, registered at*

Police Station City-I, District Sangrur.

15. The petitioner is also facing trial in four cases and has been acquitted in other cases.

16. After registration of the instant case, the petitioner absconded and was declared Proclaimed Offender. He could not be arrested for a period of about 3½ years. As per version of the State counsel, the petitioner has rivalry in the village. The other party had killed his brother Ranjit Singh and in order to take revenge of death of his brother, he killed the son and brother of the complainant. While in custody, the petitioner has also committed jail offence and he was convicted accordingly.

17. Keeping in view the nature of crime and the fact that there is rivalry between two parties in the village and both the parties have committed murders, there may be threat to the life of the petitioner as well because there would be feeling of anger in the minds of people of other party. Although the Panchayat of the village has given the Panchayatnama (Annexure P-4) in favour of the petitioner, but in view of the peculiar facts and circumstances of the case, the same is liable to be ignored, keeping in view the safety of the petitioner. No doubt, the provisions of the Punjab Act No.11 of 1962 have been enacted as a reformative measure with an object to enable the prisoners to have associations with their family members and to perform certain family obligations etc., but certain prisoners are required to be kept isolated for a long period and can only be sent on parole, if they would have spent sufficient time in custody after their conviction. While meeting out human treatment to petitioner, care has to be taken to ensure that kindness to the petitioner does not result into cruelty to any other

member of the society. The cases of Mahammad Shehbaz (*supra*) and Karamjit Singh (*supra*), relied upon by learned counsel for the petitioner are distinguishable on facts and ratio of said judgments cannot be applied to the facts and circumstances of the case in hand.

18. In the light of the above discussion, we are of the view that there is no illegality in the order dated 27.12.2022 (Annexure P-1) passed by Deputy Commissioner-cum-District Magistrate, Faridkot and there is no ground to release the petitioner at this stage on parole.

19. Dismissed.

(G.S. SANDHAWALIA)
JUDGE

May 09, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes.