IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(Sr. No. 254) **CRWP No.5115 of 2022**

Date of decision: 17.08.2023

Vicky Pandit

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present **:** Ms. Riffi Birla, Advocate for the petitioner.

Mr. R. S. Pandher, Senior DAG, Punjab.

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DEEPAK SIBAL, J. (*Oral*)

(1) Through the present petition the petitioner seeks parole to visit his family which includes his 07 year old daughter.

(2) FIR No.120 dated 12.12.2015 at Police Station Bhavwala, District Fazilka was registered under Sections 302, 307, 326, 323, 148, 149, 201, 115 and 120-B IPC and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner and his co-convict were accused therein. The matter was investigated on the completion of which the State filed a report under Section 173 Cr.P.C. on the basis of whereof the petitioner and one Ajay Pal @ Gagga were charged to face trial. The trial that ensued resulted in the conviction of both the petitioner and Ajay Pal @ Gagga under Section 302 read with Section 120-B IPC. Resultantly, the petitioner and Ajay Pal @ Gagga were sentenced to undergo life imprisonment for 20 years along with fine. Against his

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conviction and sentencing the petitioner has filed an appeal before this Court being CRA-D No.345 of 2020 which has been admitted for regular hearing. The same remains pending.

(3) On 18.02.2021, on the death of his mother, the petitioner was granted emergency parole. On the expiry of the period of parole, the petitioner surrendered.

(4) In the year 2021 the petitioner again applied for parole which was denied through an order dated 02.02.2022 passed by the Deputy Commissioner, Fazilka. The petitioner was denied parole on the ground that the Assembly elections were round the corner and therefore situation in the State was sensitive.

(5) The case of the petitioner for the grant of parole was reconsidered but again rejected through order dated 16.08.2022. This time the ground to reject the petitioner's request was on account of the fact that co-convict Ajay Pal @ Gagga had been granted parole which he had misused by not surrendering back and that the Municipal Councilor of the Ward where the petitioner's house was located had refused to give any assurance with regard to the petitioner abiding by the conditions of his parole. The sensitive law and order situation in the State was also stated as a reason.

(6) Learned counsel for the petitioner contends that the petitioner has already undergone actual custody for 07 years, 07 months and 12 days; the petitioner has no other criminal case pending against him; the petitioner cannot be denied parole on the ground that his co-convict has misused such concession; the law and order situation in Punjab in general can also not be a ground to deny parole and all that the petitioner seeks is some time to go and

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meet his family which he is entitled to especially when he has behaved himself while in custody.

(7) Learned State counsel opposes the grant of parole to the petitioner on the same grounds as stated in the aforesaid order of the State dated 16.08.2022.

(8) Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

(9) The petitioner has been convicted by the trial Court for murder and is presently undergoing the sentence of life imprisonment. Appeal filed by the petitioner against his conviction and sentencing is pending before this Court. He has no other criminal antecedents. He was granted the benefit of parole in the year 2021 which he did not misuse. He has already undergone actual custody of 07 years, 07 months and 14 days. There is also no complaint with regard to his conduct in jail. He cannot be denied parole for the reason that his co-convict has misused the grant of parole as he cannot be made to pay for the wrongful conduct of his co-convict especially when there is no material placed on the record by the State that on being released on parole the petitioner, like his co-convict, shall also misuse the grant of parole. Thus, this reason is conjectural. In the absence of specifies, the general law and order situation in the State also cannot be a ground to deny parole to the petitioner.

(10) In view of the above, we are of the opinion that the petitioner be granted parole for 14 days to meet his family, in particular his 07 years old daughter on the following conditions :-

1. *The petitioner shall be released on parole only after he has presented 02 local heavy sureties to the satisfaction of the concerned Duty Magistrate/Chief Judicial Magistrate;*

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2. *While on parole the petitioner shall own and possess a smart mobile phone which shall be kept on at all times; the phone shall always be with the petitioner; he shall share the number of the phone as also his location with the SHO of the area where the petitioner would reside and that he shall also not leave the jurisdiction of the concerned police station without the prior permission of the SHO of such police station.*
3. *The period of 14 days would commence after the surety bonds furnished by the petitioner are accepted and*
4. *On the expiry of 14 days of parole, the petitioner shall surrender before the Jail authorities, Central Jail, Kapurthala.*

(11) The petition is allowed in the afore terms. Resultantly, the orders dated 02.02.2022 and 16.08.2022 stand quashed.

(12) Records of CRA-D No.345 of 2020 be detached.

(DEEPAK SIBAL)
JUDGE

17.08.2023 **(SUKHVINDER KAUR)**
sunil yadav **JUDGE**

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

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