

CRWP-7151-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-7151-2023 (O&M)

Date of decision: August 03, 2023

Dalbir Kaur @ Biro

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. B.R. Rana-I, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner, a convict, stated to be 42 years old mother of six i.e. 5 daughters and a son, seeks parole for a period of two months, to be with and take care of her minor children. Per custody certificate dated 01.08.2023, petitioner has undergone actual sentence of 07 years 10 months and 22 days. Petition herein is under Article 226 of the Constitution of India read with Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'Act of 1962').

2. Petitioner, is undergoing sentence of rigorous imprisonment of ten years awarded to her vide trial court order dated 21.12.2016 in a case FIR No.70 dated 13.07.2015, registered under Section 21 of NDPS Act at Police Station, Sadar, District Shaheed Bhagat Singh Nagar.

3. Petitioner applied for parole to the jail authorities. Vide letter dated 11.05.2023, District Magistrate, Shaheed Bhagat Singh Nagar forwarded the letter dated 02.05.2023 of the Senior Superintendent of Police Shaheed Bhagat Singh Nagar regarding release on 08 weeks parole leave to the petitioner. Vide letter dated 02.05.2023 *ibid*, parole to the petitioner was not recommended while mentioning that "*this female prisoner is a habitual smuggler and can indulge in smuggling on availing parole leave and atmosphere of the area can be disturbed. Before this female prisoner has availed parole leave for 08 weeks from 23.06.2022 to 19.08.2022. The village panchayat has passed a resolution against drug smugglers to the effect that no drug smuggler be given parole leave. There would be danger to the state security and maintenance of public order.*"

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4. Learned counsel for the petitioner contends that reason that seems to have weighed in the mind of competent authority for denying parole is suspected involvement of the petitioner in six other criminal cases, wherein she is an undertrial currently, as is reflected from report dated 02.05.2023 of Senior Superintendent of Police, Shaheed Bhagat Singh Nagar. Learned counsel further contends that even earlier position was the same, when a co-ordinate Bench of this Court, vide its order dated 12.05.2022 (Annexure P-3), directed the District Magistrate concerned to reconsider the prayer of the petitioner for grant of parole and pass appropriate speaking order afresh within a period of 1 month. Pursuant thereto, petitioner was released on 08 weeks of parole on 23.06.2022. She surrendered in jail well in time on 19.08.2022. Petitioner never misused the said concession.

4.1. Learned counsel further submits that even Gram Panchayat of village, where petitioner resides, has certified her good conduct per Annexure P-2 appended with the petition. He further submits that as an inmate also, her conduct has been good as no complaint was either received or is pending against her.

4.2. Learned counsel for the petitioner further points out that petitioner is a housewife having six minor children who are being deprived of natural care and affection of their mother.

5. On the other hand, learned State counsel opposes the petition. He submits that petitioner is a habitual offender and will misuse the concession if she comes out on parole. There is a threat to State security and maintenance of public order if the petitioner is released on parole. He though does not controvert that petitioner was earlier granted parole for 08 weeks on 23.06.2022 and she had surrendered herself in jail well in time on 19.08.2022.

6. I have heard learned counsel for the parties and gone through the case file.

7. Concededly, pursuant to order dated 12.05.2022 passed by a co-ordinate Bench of this Court, petitioner was earlier granted concession of parole of 08 weeks on 23.06.2022 and she herself surrendered to the authorities well within the time period i.e., on 19.08.2022. She did not misuse the said concession of parole. And yet, petitioner has been denied parole on the unfounded suspicion that being a suspect in other criminal cases, she will misuse the concession. Gram Panchayat of the area where petitioner resides has also certified regarding her conduct to be good during grant of earlier parole period. Mere bald

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allegation of State, without any basis, that there is a threat of State security if petitioner is released on parole, given her past conduct, cannot be the reason of denying parole.

8. In **Chand Singh Versus State of Punjab**¹, this Court has observed as under:-

“It is the duty of the District Magistrate and the Superintendent of Police to maintain law and order in the area. If there is an apprehension for breach of peace, it is the duty of the police and the District Magistrate to look into the matter and give protection to the people who are expecting such danger from, the release of the accused on parole. The law laid down is that no body can be released if his release is detrimental to the security or integrity of the country. The mere allegation that there is apprehension of breach of peace is no criteria on the basis of which the Inspector General of Prisons can refuse the release of the petitioner on temporary parole for a specified period as laid down in the section. In the instant case, considering the fact that there is no evidence of any misuse of parole or bail or any Court order on record and in view of the ratio of law laid down in Chand Singh's case (supra), this Court is inclined to accept the prayer of the petitioner.”

9. In totality of the facts and circumstances of the present case, I am of the view that petitioner deserves grant of parole to take care of her children.

10. Accordingly, petition is allowed. The petitioner is granted parole for two months from the date of her release, subject to her furnishing indemnity bond with two local sureties of the like amount to the satisfaction of the competent authority/Duty Magistrate. Petitioner shall surrender before the jail authorities on the date and time to be notified by the releasing Court/Duty Magistrate.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 03, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No