

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

CRWP-7883-2022

DATE OF DECISION:-15.02.2023

Onkar Lal @ Raja

...Petitioner.

V.

State of Punjab and others

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Article 226 of the Constitution of India read with Section 3(1) (aa) and (d) of the Punjab Good Conduct Prisoners (Temporary Release), Act, 1962 (as amended upto date) (hereinafter referred to as “1962 Act”), prayer has been made for issuance of a writ of mandamus directing the respondents to release the petitioner for 04 weeks parole, enabling him to get the treatment of his mother done from some specialized hospital, she being suffering from heart ailment.

The petitioner, who was tried in pursuance to registration of FIR No.94, dated 17.04.2015, under Sections 15/21/22/25/29/61/85 of the NDPS Act, registered at Police Station Model Town, Hoshiarpur, District Hoshiarpur, got convicted vide judgment dated 06.06.2017 passed by the court of Judge, Special Court, Hoshiarpur, having awarded 10 years of imprisonment.

Aggrieved thereof, the petitioner filed an appeal bearing No.CRA-S-2695-SB-2017 before this Court, which is pending for final adjudication.

On earlier occasion, the petitioner was granted the benefit of regular parole for at least 3/4 times, however, the prayer made at the instance of the petitioner at present seeking parole for the purpose of getting medical treatment of her mother, who is suffering from heart disease, was not being decided, thereby, compelling him to approach this Court by way of present petition.

Learned counsel for the petitioner submits that the prayer of the petitioner is not being considered primarily for two reasons, firstly, on account of the fact that petitioner has been named in one another FIR No.58 dated 02.04.2022, registered under Sections 21/61/85 of NDPS Act at Police Station Hoshiarpur, based on the disclosure statement of co-accused-Pawan, regarding alleged recovery of 200 grams of *heroin* and, as such, relying upon instructions dated 17.09.2022 issued by the office of Additional Director General of Police (Prisons), Punjab, Chandigarh, the prayer for parole is not being considered for one year from the date, on which, the offence has been allegedly committed. Secondly, for the reason that the unmarried brother of petitioner, namely, Sarwan Chand @ Sonu is already staying with the mother, namely Manjit Kaur and is there to look after her.

Learned counsel submits that mere fact that one of the brother of the petitioner is there to look after the ailing mother cannot be taken to be a ground to deny the emergency medical parole. In this regard, he relies upon a decision rendered by this Court in ***Sukhjinder Singh @ Bitta vs. State of Punjab and others***, 2021 (3) RCR (Criminal) 27.

As regards the applicability of instructions dated 17.09.2002 relied upon by respondent-State, learned counsel for the petitioner submits

that the same cannot be made basis for not considering the request of the petitioner, in the wake of right available to him under the statutory provisions in the from of Section 3(1) (a) of the 1962 Act, which empowers the State Government in consultation with the District Magistrate, subject to fulfillment of certain conditions, order for temporary release of the prisoners in case of serious illness of their family member, which thus, can't be restricted or regulated by way of any letter/instructions. In support of this, learned counsel for the petitioner places reliance upon the decision rendered by this Court in CWP No.30331 of 2018, titled as “**Bhupinder Singh vs. State of Punjab and others**”, decided on 01.04.2019.

On the other hand, prayer made at the instance of petitioner has been opposed by learned State counsel, relying upon the guidelines issued by the office of Additional Director General of Police (Prisons), Punjab, Chandigarh while submitting that the petitioner having been implicated as an accused in FIR No.58 dated 02.04.2022, registered under Sections 21/29/61/85 of NDPS Act, Police Station City Hoshiarpur, he cannot be granted the benefit of release on parole on account of illness of his mother, within one year thereof.

I have heard learned counsel for the parties and gone through the paper book as well as law cited at bar. I find substance in the submissions made on behalf of the petitioner.

In view of the law laid down by this Court in **Sukhjinder Singh @ Bitta's** case (supra), the availability of brother of the petitioner with the mother for the purpose of getting her treatment done cannot be taken to be a ground to deprive the petitioner of his right as envisaged under Section 3(1)

(a) of the 1962 Act. Relevant paras 5 and 6 of the aforesaid judgment are reproduced hereunder:-

“5. Section 3(1)(aa) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 permits temporary release of a prisoner on parole on the ground of serious illness of 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. In **Kulwant Singh VS. State of Punjab (PHHC): 1987(2) CurLJ (CCR) 438** parole was allowed on the ground of serious illness of mother. Since there is no condition that such parole can be granted only where the prisoner is the only person to look after such family member seriously ill, temporary release on parole cannot be denied on the ground of mere availability of other family member to attend such family member who is seriously ill for his/her medical treatment.

6. Although parole can be denied on the ground of threat to security of State or maintenance of public order but the same cannot be denied on the ground of likelihood of the prisoner committing an offence during the period of parole. Reference in this regard may be made to **Mohd. Ifkhar @ Kaka Vs. State of Punjab: 2019(2) Law Herald 1156.**”

On the point of applicability of the instructions dated 17.09.2002 issued by the office of Additional Director General of Police (Prisons), Punjab, Chandigarh, I find that the same merely being a guiding factor can not supersede and regulate the intent of the Legislature as provided under Section 3(1) (a) of the 1962 Act, which confers a right in favour of a convict, enabling the State Government in consultation with the District Magistrate to order for the temporary release, in case of serious illness of a

member of family and no where prohibits consideration for a period of one year from registration of any other case against the convict prisoner. The aforesaid view can even be derived from the observations made by this Court in ***Bhupinder Singh's*** case (supra), wherein, it has been categorically observed that the legislative intent or mandate cannot be defeated or circumvented by incorporating guidelines or rules etc. In the present case, the respondents have tried to do it by issuing letter/guidelines which is wholly impermissible in law.

In view of the discussion and observations made hereinabove, respondent No.4 is directed to treat this writ petition as representation and consider the prayer made by the petitioner seeking his release on emergency parole for a period of 04 weeks, so as to enable him to get his mother treated from some specialized hospital on account of her heart ailment, within a period of one month from the date of receipt of certified copy of this order.

Disposed of accordingly.

15.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No