

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

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CRWP-7454-2023 (O&M)
Date of decision: 25.09.2023

Balbir Raj @ Vipin

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rajpreet Brar, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Article 226 of the Constitution of India for quash/cancel/set aside the impugned order dated 05.05.2023 passed by respondent No.3, District Magistrate, Pathankot and further issue directions to the respondents to release the petitioner for eight weeks parole to enable him to meet and look after his family members and to settle the household affairs.

2. Learned counsel contends that the petitioner had filed an application for grant of parole under Section 31 (1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and Amended Act, 2015-16 and Punjab Government Notification dated 13.12.2018 vide No.30-PLA-2018/61, so as to meet and look after his family members and settle household affairs, which was rejected vide order dated 05.05.2023 (Annexure P-3) on the solitary ground that there is apprehension of danger to the State security and disturbance of Public

order in the State, if he is released on parole. He submits that the petitioner is in custody since 20.02.2021 and has no other case pending against him. He is undergoing sentence of 10 years in FIR No.12 dated 20.02.2021, under Sections 20, 29 and 27-A of NDPS Act, at Police Station Taragarh, District Pathankot, wherein he was convicted by the Sessions Court vide judgment and order dated 21.10.2022, against which CRA-S-2565-2022 has been filed and pending before this Court. He further submits that the petitioner is 35 years old, has an old ailing father, who is required to be looked after, besides his wife and 3 minor children and there is no other male member in the family. He relies on the judgment passed by the Division Bench of this Court in **Avdesh Kumar vs. State of Punjab and Others**, 2023 (3) R.C.R. (Criminal) 564, wherein parole had been rejected on the ground that mere apprehension of petitioner indulging in sale of contraband or of causing breach of peace and it was held that the same would not bring the case within ambit of Section 6 (2) of the Act to enable competent authority to reject the application for temporary parole.

3. Short reply by way of affidavit by Gurcharan Singh Dhaliwal, PPS, Superintendent Central Jail Shri Goindwal Sahib has been filed by learned State counsel. The same is taken on record. He opposes the same on the ground that the petitioner stands convicted under the NDPS Act for a sentence of 10 years and the order has been rightly passed.

4. Heard learned counsel on either side.

5. It would be worthwhile to refer to the judgment of Division Bench of this Court in **Avdesh Kumar** (supra), the relevant paras of the same read thus:

“14. Likewise, the Coordinate Bench in Jatinder Singh’s case (supra) wherein the petitioner therein had been declined parole

on the ground that while on parole he could do business of selling drugs and there was apprehension regarding disturbance of law and order and local police had objection to the same, set aside the impugned order on the ground that the impugned order had been passed in a routine and mechanical fashion only by reciting that if such concession was granted, there would be apprehension regarding disturbance of law and order. However, no foundation/material had been adverted to in the reply or by learned State Counsel during the course of arguments to justify such apprehension. The impugned order was set aside and the petitioner therein was held entitled to parole for eight weeks and the competent authority was directed to pass necessary orders for temporary release of the petitioner therein subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behavior during the period of parole and also to surrender in Jail after expiry of the period of parole.

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16. Admittedly, in the case in hand, the claim of the petitioner had been rejected on the ground that in case he is released on parole, he would indulge in sale of contraband besides it would give bad effect to the young generation and there was apprehension of breach of peace. The impugned order does not refer to any material on the basis of which said satisfaction has been recorded and as is based merely on conjectures and surmises. Such a consideration is unsustainable and can be routinely pressed into action for defeating the statutory objective to temporarily release a convict in terms of the provisions of the Act. Mere apprehension of the petitioner indulging in sale of contraband or of causing breach of peace would not bring the case within the ambit of Section 6(2) of the Act so as to enable the competent authority to reject the application for temporary release on parole.”

6. A Division Bench of this Court in **Jassa Singh @ Jassa vs. State of Punjab** 2016 (5) RCR (Criminal) 522, wherein the accused was convicted and sentenced under the NDPS Act for 12 years, finding the reasoning of the Magistrate to be not correct, that if the accused is released, would generally get involved in causing danger to the security of the country and would involve himself in criminal activities, set aside the order.

7. In **Ram Chander vs. State of Punjab**, 2017 (3) RCR (Criminal)

340, this Court observed and held that the rejection of parole on apprehension of the accused in committing a crime, if released, is not a sufficient ground to refuse temporary release and it would not fall within the exceptions of the danger to the security of the State and maintenance of the public order.

8. Indubitably, the petitioner has been convicted by the trial Court for the offence under Sections 20(c) and 27(a) of NDPS Act, and sentenced for a period of 10 years, against which, the appeal filed before this Court is pending adjudication. However, rejection of parole on an unsubstantiated apprehension of disturbing the State security or maintenance of public, would not bring the case within the ambit of Section 6(2) of the Act so as to have enabled the competent authority to reject the application for temporary release on parole, it being a part of the compassionate constitutionalism of the system, as held by Hon'ble the Supreme Court in **Babu Singh vs. State of U.P.**, 1978 (1) SCC 579.

9. As a fall out and consequence of the afore discussion, the present petition deserves to be and is hereby allowed. The petitioner be released on parole for a period of eight weeks from the date of his release, upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate concerned.

(AMAN CHAUDHARY)
JUDGE

September 25, 2023
M.Kamra

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