

CRWP-7855-2023
(243)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-7855-2023 (O & M)
Date of decision: 15.11.2023

Surjit Kumar

.... Petitioner

V/s

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Ghuman, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab..

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Article 226 of the Constitution of India is for setting aside the impugned orders dated 07.02.2023 and 21.07.2023 (Annexures P-6 and P-7) passed by the Deputy Commissioner, Jalandhar-respondent No.3 whereby parole has been declined to the petitioner.

2. The brief facts of the case are that the petitioner was convicted by the Judge, Special Court, Jalandhar vide judgment and order dated 02.06.2008 in case FIR No.93 dated 12.08.2003 under Sections 15 of the NDPS Act, Police Station Bhogpur and was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for one and a half years.

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A co-accused of the petitioner, namely, Ranjit Kumar was convicted by the Sessions Court, Jalandhar vide judgment and order dated 20.07.2005 and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of two years.

3. The petitioner and his co-accused filed two separate appeals bearing No.CRA-S-1375-SB of 2005 and CRA-S-1561-SB of 2005 before this Court. Both the said appeals were heard together and were dismissed vide judgment dated 20.03.2014 passed by this Court.

4. The petitioner applied for 08 weeks parole to the Jail authorities (respondent No.5) alongwith *panchayatnama* under Section 3(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 to meet his family members and to look after household affairs. The case of the petitioner was forwarded by the Superintendent Jail, Ludhiana (respondent No.5) to the Deputy Commissioner-District Magistrate, Jalandhar (respondent No.3). A copy of the *panchayatnama* and recommendation letter dated 05.01.2023 of the Superintendent, Central Jail, Ludhiana are attached as Annexure P-1 and P-2 to the petition.

5. The Deputy Commissioner, Jalandhar (respondent No.3) sent the parole case of the petitioner to the Senior Superintendent of Police, Jalandhar (Rural) for verification. The Senior Superintendent of Police concerned sought a detailed report of the petitioner from the concerned

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SHO submitted his report dated 13.01.2023 wherein he mentioned that 16 FIRs had been registered against the petitioner. In 08 FIRs, the petitioner had been acquitted, in 04 FIR, he had been convicted where as cancellation report had been filed in one case. It was also mentioned that as the petitioner had undergone parole 07 times earlier and had surrendered each time, there was no objection to his being granted parole once again. A copy of the recommendation of the SHO, Police Station-Bhogpur, District Jalandhar is annexed as Annexure P-4 to the petition.

6. Unknown to the petitioner, his claim for grant of parole was declined by the Deputy Commissioner, Jalandhar vide order dated 07.02.2023 (Annexure P-6) with a finding that the petitioner was a habitual offender and a famous drug smuggler. Therefore, he was likely to get involved in drug trafficking if he was granted the concession of parole. It was also stated that law and order would be disturbed and there was danger to the State security as well. A copy of the said order is attached to the petition as Annexure P-6.

7. As the petitioner appeared to be unaware of the aforementioned order, a petition bearing CRWP-1166-2023 was filed before this Court which came to be disposed of vide order dated 14.07.2023 (Annexure P-5) with the following observations:-

“In view of the above, the Appropriate Authority i.e. District Magistrate, Jalandhar shall consider and decide the case of the petitioner within a period of 02 weeks from the date of receipt of a certified copy of this order”.

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8. In compliance of the aforementioned order, the Deputy Commissioner, Jalandhar-respondent No.3 vide order dated 21.07.2023 (Annexure P-7) had held that as the claim of the petitioner stood rejected earlier vide order (Annexure P-6), no orders were required to be passed.

9. The aforementioned orders (Annexure P-6 and P-7) are under challenge in the present petition.

10. The learned counsel for the petitioner contends that vide letter dated 05.01.2023 (Annexure P-2), of the Superintendent, Central Jail, Ludhiana, addressed to the District Magistrate, Jalandhar, it has been stated that as the petitioner had already availed parole 07 times earlier as was evident from the details (Annexure P-3), no report of the Police Department was required. Despite that fact, a report was sought. Even in the said report dated 13.01.2023 (Annexure P-4) while enumerating the criminal antecedents of the petitioner, it has been held that as the petitioner had earlier availed parole peacefully, no one had any objection to his being released on parole once again. Though the petitioner was a convict in 04 other cases, that fact itself did not entitle him to the grant of parole. He contends that mere apprehension of breach of peace or the likelihood of the convict committing a similar offence or absconding if granted parole without any corresponding material on record would not be sufficient to reject the prayer of the convict. As in the instant case, the petitioner had availed parole 07 times and had surrendered after the expiry of the same, the apprehension expressed in the impugned orders is completely unfounded.

Reliance is placed on the judgments in '*Manga @ Manga Singh versus*

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Narinder Singh @ Nindi versus State of Punjab and others 2020(2) DC (Narcotics) 253' and 'Kapil versus State of Haryana and others (CRWP-7247-2023 decided on 17.10.2023)'

11. A reply dated 06.11.2023 by way of an affidavit of Shivraj Singh Nandgarh, PPS, Superintendent, Central Jail, Ludhiana has been filed on behalf of respondents No.2 to 5 and a reply dated 15.11.2023 by way of an affidavit of Vijay Kanwar Paul, PPS, Deputy Superintendent of Police, Sub Division Adampur, District Jalandhar (Rural) has been filed on behalf of respondents No.1, 4 and 6. Both are taken on record. While referring to the reply dated 15.11. 2023, the learned counsel for the State submits that as many as 16 FIRs stood registered against the petitioner. He has been convicted in 04 cases whereas in some cases either a cancellation report has been filed or the cases are pending investigation. In other cases, he stands acquitted. Looking into the criminal antecedents of the petitioner, he was not entitled to the grant of parole. However, while referring to the reply dated 06.11.2023, he admits that the petitioner has earlier availed parole on 07 occasions and had not misused the concession.

12. I have heard the learned counsel for the parties.

13. In the present case, parole has been declined on the grounds that the petitioner was a famous drug smuggler who was likely to involve himself in drug smuggling leading to a law and order problem, there was a danger to the State security and that he was a habitual offender. The said findings recorded by the respondent No.3 cannot be accepted. As has already been mentioned hereinabove, though the petitioner was an accused

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to the grant of parole to a person who is a convict/under trial in other cases. Further, the petitioner has already been granted the concession sought by way of the present petition 07 times earlier and has not misused the same. There is absolutely no material on record to hold that there was a danger to the law and order situation or to State security in case he was granted the concession of parole. Quite to the contrary, the report dated 13.01.2013 of SHO, Police Station Bhogpur, District Jalandhar (Annexure P-4) is categoric to the effect that the petitioner has peacefully availed his parole earlier and has surrendered each time.

14. In view of the above discussion, the petition is allowed and the impugned orders dated 07.02.2023 and 21.07.2023 (Annexures P-6 and P-7) are hereby set-aside. The petitioner is ordered to be released on parole for a period of five weeks from the date of release on furnishing of requisite personal and surety bonds to the satisfaction of the District Magistrate concerned, who is directed to impose such conditions as may be considered necessary to secure the presence of the petitioner in jail after the parole period is over and to ensure that the temporary release is not misused by securing the bond of mandatory good conduct with a clear stipulation that in case the petitioner commits any offence during his period of temporary release, his release warrants would be cancelled as provided under the appropriate Rules.

15. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case the

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parole period i.e. five weeks starting from the date of his release. Needless to say that the FDR shall be returned to the duly authorized representative of the petitioner against proper receipt once the petitioner surrenders before the Jail authorities.

16. The petitioner shall furnish a telephone/mobile phone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also furnish information of his telephone/mobile phone number to the SHO of the police station where the FIR was registered as also to the SHO of the police station in whose jurisdiction the petitioner resides.

17. The present petition is disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

November 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No