

CRWP-8054-2023
(244)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-8054-2023 (O & M)
Date of decision: 15.11.2023

Kailash Petitioner

V/s

The State of Haryana and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Susheel Gautam, Advocate,
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Article 226 of the Constitution of India is for the issuance of a writ, order or direction for setting aside the order dated 14.07.2023 (Annexure P-1) passed by the Commissioner, Karnal Division, District Karnal.

2. The brief facts of the case are that an FIR No. 381 dated 24.02.2022 under Section 18 of the NDPS Act, Police Station City Panipat, District Panipat came to be registered against the petitioner and on conclusion of the trial, the petitioner came to be convicted 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 02 years.

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3. The convict (petitioner) preferred a Criminal Appeal No.S-776-SB-2005 before this Court and vide judgment dated 27.04.2022, his appeal came to be dismissed after which the petitioner was re-admitted in Jail on 09.11.2022.

4. The petitioner submitted an application for the grant of 10 weeks' parole in the office of respondent No.4-Superintendent Jail, District Jail, Panipat which was forwarded to the concerned authorities i.e. respondents No.2, 3 and 5 for verification. The Superintendent of Police, Aager Malwa, District Aager Malwa (respondent No.5) vide his report dated 14.05.2023 did not recommend the release of the petitioner on parole on the grounds that the petitioner was likely to cause breach of peace and would not come back to surrender, if so released.

5. Based on the aforementioned report, the sanctioning authority i.e. the Divisional Commissioner, Karnal Division, Karnal did not sanction parole to the petitioner vide order dated 14.07.2023 (Annexure P-1).

6. It is this order which is under challenge in this petition.

7. The learned counsel for the petitioner contends that the ground on which parole has been denied to the petitioner is untenable. 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. In the instant case, the petitioner had been convicted and had preferred an appeal before this Court. He had been granted the concession of suspension of sentence. After his appeal had been dismissed, he had surrendered and

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petitioner absconding was completely unfounded. Reliance is placed on the judgments in '*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)*'.

8. The learned counsel for the State while referring to the reply dated 02.09.2023 contends that the Superintendent of Police, Aager Malwa, District Aager Malwa (Madhya Pradesh) had clearly not recommended the release of the petitioner on parole as the petitioner was likely to cause breach of peace and would not come back, if so released. Therefore, the impugned order had rightly been passed which did not warrant any interference and the prayer of the petitioner was liable to be rejected.

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

10. In the present case, the application of the petitioner for the grant of parole was rejected on the ground that the release of the petitioner was likely to cause breach of peace and he was likely to abscond, if granted the aforesaid concession. However, there is absolutely no material on record to substantiate the findings arrived at in the impugned order which in turn is based on the report of the Superintendent of Police, Aager Malwa, District Aager Malwa (Madhya Pradesh). Be that as it may, it is a settled position of law that even in such a situation where there is an apprehension of breach of peace, maintenance of public order or danger to the security of the State on account of the release of a convict on parole, it is the duty of the competent authority to apply its mind on the basis of inputs received by them before allowing or denying the benefit in question. As has already been mentioned

hereinabove, there is no such tangible material on record for the appropriate

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authority to arrive at the conclusions so arrived at. Even otherwise, pursuant to the dismissal of the appeal of the petitioner, the petitioner whose sentence had been suspended, surrendered before the Jail authorities on 09.11.2022 which further goes to establish the fact that there is little likelihood of the petitioner absconding, if granted the concession of parole.

11. In view of the above discussion, the petition is allowed and the impugned order dated 14.07.2023 (Annexure P-1) is 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.

12. 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 petitioner does not surrender before the Jail authorities on the expiry of his parole period i.e. five weeks starting from the date of his release.

13. 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

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also to the SHO of the police station in whose jurisdiction the petitioner resides.

14. 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