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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRWP-10146-2022****Date of Decision: May 29, 2023****Jaswinder Singh**

..... Petitioner

Versus**State of Punjab**

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

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

Mr. Sandeep Vermani, Addl.AG, Punjab.

LISA GILL, J.

1. Prayer in this petition is for grant of parole to the petitioner for a period of eight weeks under Section 3(1)(d) of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

2. It is submitted that petitioner has been convicted for the offence punishable under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act (for short – 'NDPS Act') (in FIR No. 180 dated 08.08.2017 registered at Police Station Sadar Ludhiana) vide judgment dated 21.09.2021 and sentenced vide order dated 23.09.2021 to undergo rigorous imprisonment for a period of ten years besides pay fine of ₹1 lakh and in default thereof to undergo rigorous imprisonment for one year. CRA-S-1373-2021 filed by the petitioner is stated to be pending. Petitioner also stands convicted for the offence punishable under Section 15 (c) and 25 of

the NDPS Act (in FIR No. 181 dated 08.08.2017 registered at Police Station Sadar Ludhiana) and sentenced to undergo rigorous imprisonment for a period of twelve years besides pay fine of ₹1 lakh and in default thereof to undergo rigorous imprisonment for one year. CRA-D-652-2021 filed by the petitioner against the said conviction and sentence is pending.

3. Petitioner's application seeking parole was rejected vide impugned order dated 29.06.2022. Deputy Commissioner, Ludhiana while rejecting petitioner's prayer for parole has referred to the report submitted by Commissioner Police, Ludhiana to observe that petitioner's association with smugglers of drugs, arms and ammunition is a threat which may lead to disruption of state security and local peace.

4. Learned counsel for the petitioner submits that impugned order dated 29.06.2022 is absolutely unjustified and arbitrary. There is nothing on record to indicate that petitioner has any links with any gangster. Moreover, petitioner had been afforded concession of bail during pendency of trial against him and he had never misused the said concession. He has referred to orders dated 22.11.2018 and 03.05.2018 passed in CRM-M-42524-2018 and CRM-M-10362-2018, respectively. Petitioner, it is stated, does not fall under the definition of hard core prisoner. It is relevant to refer to Section 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short, '1962 Act'), which reads as under:-

“6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released –
Notwithstanding anything contained in section 3 and 4, -

(i) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period

of his earlier release under any of the aforesaid sections;
and

- (ii) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order”

5. It has been held in a plethora of cases that temporary release of a prisoner on parole or furlough can be denied only if the release is likely to endanger security of State or maintenance of public order. For arriving at such satisfaction that danger to security of State or maintenance of public order is indeed present, there has to be sufficient material before the District Magistrate for consideration.

6. In the case of **Bansi Lal versus State of Punjab and others 2016 (4) RCR (Criminal) 1017**, it has been held by the Division Bench of this Court as under:-

“ The term 'Security of the State' out of the expressions of 'law and order', and 'public order' is considered more grave. It may arise from within or outside the State. It is generally understood as an act of aggression from outside, or militant and terrorists operations engineered by foreign agencies. It can also be effected by passing of classified information like documents, secrets, maps etc. to foreign countries or through undesirable foreign links. An act which poses a threat to the State is to be considered as a threat affecting the security of the State. 'Public order', however, is synonymous with public safety. It is something more than mere law and order. Every breach of peace does not lead to public disorder. Maintenance of public order is intended to prevent grave public disorder, which is not

the same as maintenance of law and order. The latter is comparatively of a lesser gravity and in fact of local significance. An act which does not affect the public at large or has no impact on it, is not to be taken as an act affecting maintenance of public order. The distinction between law and order and public order is one of degree and extent of reach of the act in question on society. In the case of breach of law and order it affects individuals directly involved as distinct from the public at large. This would raise a law and order problem only. The true test is the potentiality of the act in question. One act may affect some individuals and local persons while another though of a similar nature may impact the public at large. An act which disturbs the even tempo of life of the public at large affects the maintenance of public order. These aspects are to be considered by the concerned District Magistrates and competent authorities under Act while deciding to recommend or not to recommend the temporary release of a prisoner on parole and/or passing orders for temporary release by the competent authorities under the Act. The exercise is not to be lightly conducted and the concerned District Magistrate and/or the competent authorities are to apply their mind on the basis of inputs received by them for recommending or passing an order as the case may be for temporary release of prisoners on parole.”

7. After perusal of the impugned order as well as reply and additional affidavit dated 29.03.2023 and hearing learned counsel for the parties, we do not find any material on record to substantiate the stand taken by the State that petitioner has links with other smugglers of drugs, arms and ammunitions.

8. Learned counsel for the State during the course of arguments is unable to substantiate the averments in impugned order dated 29.06.2022 or

report dated 30.05.2022 that due to release of petitioner on parole there is any threat to State security and local peace.

9. In our considered opinion, reasons for declining parole to the petitioner in the facts and circumstances of the case are unsustainable. The present case calls for reconsideration of the matter by the competent authority in accordance with law and parameters as laid down for grant of parole.

10. Accordingly, order dated 29.06.2022 is set aside with a direction to the competent authority to reconsider the matter and decide the same expeditiously and preferably within a period of two weeks from receipt of certified copy of this order, by passing a speaking order, in accordance with law.

(LISA GILL)
JUDGE

May 29, 2023
Rts

(RITU TAGORE)
JUDGE

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