

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

CRWP-11436-2022

Date of Decision: February 24, 2023

Sukhwinder Singh Jazz alias Sukhwinder Singh Juj ...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jaspreet Singh Brar, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Petitioner has been convicted vide judgment dated 10.09.2019 by the Court of learned Judge, Special Court, Faridkot, in case FIR No.51 dated 20.04.2017 registered at Police Station Sadar Faridkot, District Faridkot, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and has been sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/- with default sentence. Criminal appeal bearing CRA-S-3517-2019 filed by the petitioner has been admitted by this Court and recovery of fine has been stayed, as per order dated 05.12.2019 (Annexure P-1)

2. Petitioner submits that he is the first offender and had moved an application to respondent No.2 through respondent No.3 for availing eight weeks of regular parole. However, respondent No.3 sent the said application to Senior Superintendent of Police, Faridkot, for verification, who vide his letter dated 28.09.2022 reported that releasing the petitioner on parole would be threat to maintenance of law and order and peace in the State. On the basis of this report, application of the petitioner for grant of parole was declined by respondent No.2, vide

impugned order dated 18.10.2022, which has been challenged by the petitioner before this Court to be illegal and void.

3. In the reply filed by way of affidavit of Shri Rajiv Kumar Arora, Superintendent, Central Jail, Faridkot on behalf of respondent Nos.1 to 3, it is submitted that parole application has been rejected on the basis of report of the Senior Superintendent of Police, Faridkot, as there is apprehension of breach of State security and maintenance of public order. Respondents have also quoted Section 6 of the Punjab Good Conduct Prisoners (Temporary) Release Act, 1962 (hereinafter referred as 'the 1962 Act') in order to contend that no prisoner can be released, if on the report of District Magistrate or any of the officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State Government or the maintenance of the public order. Respondents have thus justified the action in rejecting parole.

4. I have considered submissions of both sides and have perused the record.

5. It is not disputed by the respondents that earlier also petitioner was granted parole and he had surrendered before the jail authority well in time and did not misuse the parole. The impugned order (Annexure P-2) does not indicate that there was any material before the Senior Superintendent of Police, Faridkot to come to the conclusion that releasing the petitioner on parole was likely to create a law and order problem or a threat to peace, harmony and security to the State.

6. As observed by this Court in case of "**Narinder Singh @ Nindi v. State of Punjab and others**", 2020(2) DC (Narcotics) 253, beneficial nature of the statutory provisions made in 1962 Act are aimed

at reformation and rehabilitation of the prisoners. A prisoner is entitled to grant of parole not only in the event of illness of family members but also for the purpose of socializing with his family members, which is sufficient cause within the meaning of Section 3(1)(d) of 1962 Act.

7. However, the question is as to whether rejection of the application of the petitioner for grant of parole on the ground that same is likely to endanger the security of the State and maintenance of public order, is justified.

8. Section 6 of the 1962 Act provides the cases, where consultation with District Magistrate is not necessary or where prisoners are not to be released. It reads as under:-

“6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released.-
Notwithstanding anything contained in sections 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 maintenance of public order.”

9. In ***Jassa Singh @ Jassa Vs. State of Punjab 2016 (5) RCR (Criminal) 522*** a Division Bench of this Court observed as under:-

“7. In terms of the above Section 6 (ii) of the Act, a prisoner is not entitled to be released under the 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 maintenance of public order. Temporary release of a prisoner on parole or furlough as the case may be can be denied

if his release is likely to endanger the security of the State or the maintenance of public order. For reaching satisfaction of danger to the security of the State or the maintenance of public order there has to be material before the District Magistrate, for consideration as to whether the release of a prisoner would be a threat to either or both of them. Parole cannot be denied and in fact is not liable to be denied on mere generalization by recording that generally it has been seen that prisoners on release generally engage themselves in smuggling activities causing danger to security of the country and contraband are again recovered from them. This can be ensured by asking the petitioner/prisoner to execute necessary bonds that while on parole he would maintain good behavior and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety.”

10. In “**Bansi Lal Versus State of Punjab and others**”, 2016 (4)

RCR (Criminal) 1017 another Division Bench of this Court observed as under:-

“15. 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.”

11. In “**Jugraj Singh @ Bhola Vs. State of Punjab and other**”, **2010 (25) RCR (Criminal) 138**, another Division Bench of this Court observed as under:-

“.....In our opinion, the release of a convict on parole is a wing of reformatory process. Section 3 of the Act has been enacted as a reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined to him.....”

12. In “**Ram Chander Vs. State of Punjab and others**”, **2017(3) RCR (Criminal) 340**, it has been held that mere likelihood of committing crime is not to be taken as an apprehension of a threat to the security of the State or maintenance of public order.

13. In the present case, application of the petitioner for grant of parole has been rejected on the ground that in case the petitioner is

released on parole, there will be danger to security of the State and maintenance of public order but the respondents have not placed on record any material to substantiate these grounds of rejection. Merely reproduction of the language of the statute without any supportive material will not furnish a valid ground for rejection of the application of the petitioner for grant of parole.

14. Section 2(aa) of the 1962 Act which defines hardcore prisoner reads as under:- “

(aa) “hardcore prisoner” means a person confined in prison under a sentence of imprisonment, who has been convicted of-
(i) an offence of rape with murder under section 376 read with Section 302 of the Indian Penal Code, 1860
(ii) an offence punishable under Section 14 of the Protection of Children from Sexual Offences Act, 2012.”

15. The petitioner, not having been convicted and sentenced under the above-said penal provisions, does not fall under the definition of hardcore prisoner.

16. Apprehension expressed by Ld. State counsel on behalf of the respondents that the petitioner may commit similar offence during the period of parole is hypothetical. To allay any such apprehension, adequate conditions can be imposed upon the petitioner at the time of his release on parole and his conduct can be kept under watch.

17. In view of the above discussion, the petition is allowed and the impugned order dated 18.10.2022 (Annexure P-2) is hereby quashed. The petitioner is ordered to be released on parole for a period of six 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

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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 canceled as provided in Rule 4 of Punjab Good Conduct Prisoners' (Temporary Release) Rules, 1963.

February 24, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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