

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

CRWP-11598-2022 (O&M)

Decided on : 31.01.2023

Shivam

... Petitioner

Versus

State of Punjab and others

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Ms. Bandana Trikha, Advocate for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present criminal writ petition filed under Article 226 is directed against the order of the District Magistrate, Fazilka dated 03.11.2022 (Annexure P-1), wherein the prayer for grant of parole for 8 weeks has been rejected.

2. The ostensible reason as such is that no one from his *Mohalla* is responsible for his return and there are chances of absconding and there would be an apprehension of breach of trust.

3. Counsel for the petitioner has pointed out that the conviction for 14 years alongwith a fine of ₹1 lakh was recorded in FIR No.46 dated 03.06.2016 under Sections 458, 395 IPC and 25/54/59 of the Arms Act registered at Police Station Abohar Thana City-2, District Fazilka on 11.02.2022 by the Sessions Court, Fazilka. It is submitted that the reasoning is in contradiction to the provisions of the Act, which provide adequate protection as such in case the convict does not surrender and there is a provision for taking sureties and even release on personal bonds. It is, accordingly, submitted that the order is non-speaking and smacks of non application of mind by the competent authority. It is submitted that

the purpose as such of parole is time and again held to be a reformative measure, so that the convict can interact to his family members, relatives and friends. It is pointed out that he has undergone 2 years and 6 days as per the custody certificate dated 02.01.2023 and is in custody since 11.06.2016 and, therefore, submits that the order is not sustainable.

4. We have perused the rules as such of Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 (for short '1963 Rules') and there is a procedure prescribed under Rule 3 (3) that the Releasing Authority on being satisfied that the prisoner is entitled to be released under the Act, may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant in Form B ordering the temporary release of the prisoner. The same has to specify the period of release, the place or places which the prisoner is allowed to visit during the period of such temporary release and the amounts for which the security bond and the surety bond shall be furnished by the prisoner in Form C and D, respectively. The proviso further provides that the security bond and the surety bond are not to exceed ₹2 lakh nor to be less than ₹50,000/- in any case, subject to the satisfaction of the competent authority.

5. Rule 3 (4) of the 1963 Rules provides that the prisoner shall be informed on the receipt of the release warrant by the Jail Superintendent and also inform the members of the prisoner's family for making arrangements for execution of the security and surety bonds in Form C and D, respectively for securing the release of the prisoner. Sub-clause 5 of the said rule further provides that on having been furnished the necessary bonds, the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant received from the District

Magistrate. There is further protection provided that the Officer-in-charge of the police station within whose jurisdiction the place or places to be visited by the prisoner or are situated would be forwarded a copy of the warrant and release certificate in Form E. Officer-in-charge of the police station is to keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector-General. Relevant Rule 3 and sub-Rules (3 to 6) read as under:-

“(3) If, after making such enquiry as it may deem fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant Form B ordering the temporary release of the prisoner, specifying therein (i) the period of release, (ii) the place or places which the prisoner is allowed to visit during the period of such temporary release, and the amount for which the security bond and the surety bond shall be furnished by the prisoner in Forms C and D [respectively].

Provided that the amount of the security bond and the surety bond [shall neither exceed rupees two lacs nor it shall be less than rupees fifty thousand in any case, subject, however to the satisfaction of the competent authority in each case].

(4) On receipt of the release warrant the Superintendent of Jail shall inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail to the the District Magistrate.

(5) On receipt of the information from the District Magistrate that necessary bonds have been furnished, the

Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

(6) The Superintendent of Jail shall also immediately forward to the Officer-in-charge of the Police Station within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the release certificate in Form E. The Officer-in-charge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector-General.”

6. Form C under Rule 3 is in the form of personal bond which has to be executed by the prison and the Form D under the said rule is a surety bond which has to be executed by two persons. The said Forms C & D read as under:-

“FORM C

(See rule 3)

Personal Bond

In the Court of the District Magistrate.....

This Bond is made on the.....by me..... (name of the prisoner). Whereas the Governor of Punjab (hereinafter referred to as "the Government") is pleased to order my release on parole/furlough for a period of.....weeks/days commencing from.....and ending on.....under section.....of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, on the condition of my furnishing a personal bond as well as a surety bond, each for a sum of Rs..... to observe the conditions specified below;

Now, therefore, I do hereby bind myself to faithfully observe all the conditions mentioned herebelow and in case of my making default in observing any of them, I bind myself to forfeit to the Government the sum of Rs.....

(1) I shall during the period of my temporary release reside at village/town..... ,Tahsil..... , District.....

and shall not without obtaining the permission of the District Magistrate- visit any place not specified in the release warrant.

(2) I shall during the period of my temporary release keep peace and maintain good behaviour.

(3) At the expiry of the period of _____ Weeks/days for which I have been temporarily released shall surrender myself to the Superintendent _____ Jail to undergo the unexpired portion of my sentence.

(4) At the time of my release on parole/furlough I shall give to the District Magistrate _____ full particulars of the place where I intend to reside during the period of my temporary release and shall keep him duly informed of any subsequent change of my residence during the said period.

(5) In case any of my sureties becomes insolvent or dies, I shall furnish fresh surety immediately.

Accepted, for and or behalf
of the Governor of Punjab

Signature or thumb-impression
of the prisoner.”

FORM D
(See rule 3)
Surety Bond

In the Court of the District Magistrate.....

This Bond is made on the..... By..... (1st surety) and..... (2nd surety) (hereinafter collectively referred to as the "sureties").

Whereas the Governor of Punjab (hereinafter referred to as the Government) is pleased to order the release of.....(hereinafter referred to as the prisoner) on parole/furlough for a period of weeks/days commencing from.....and ending on.....under section....of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, on the condition of the prisoner furnishing a bond as well as a surety bond each for the sum of Rs.....to observe the

conditions on which the prisoner has been temporarily released;

And whereas the prisoner has on.....executed a personal bond for the sum of Rs.....to observe the conditions specified therein.

Now, therefore, the sureties jointly and severally do hereby bind themselves to forfeit to Government the sum of Rs.....in case the prisoner makes a default in observing any of the conditions specified in his personal bond.

Accepted for and
On behalf of the Government of Punjab.

Signature of the first surety.

Signature of the second surety.”

7. A perusal of Rule 10 provides forfeiture of bonds and credit of amount forfeited which is to be regulated under the provisions of Cr.P.C. The said rule read as under:-

“10. Forfeiture of bonds and credit of amounts forfeited. [Sections 10(1) and 10(2)(c)]. The forfeiture of the amounts of security/surety bonds shall be regulated under the provisions of Code of Criminal Procedure, 1898, and the amount so forfeited shall be credited under receipt head "XVII-A - Administration of Justice - General Fees, Fines and Forfeiture - Other General Fees, Fines and Forfeitures".

8. It is, thus, apparent that there is sufficient safeguard provided in the rules itself which apparently the competent authority is blissfully unaware of while deciding such applications and the impugned order is, thus, not sustainable.

9. Resultantly, keeping in view the settled principles of law that the convicts are to be granted the benefit of parole which is a statutory right as given by the State itself, we are of the considered opinion that the impugned order dated 03.11.2022 (Annexure P-1) is not sustainable. Accordingly, the present petition is allowed and the impugned order is quashed. The authorities are directed to release the petitioner on parole for a period of 6 weeks on furnishing of requisite bail bonds/surety bonds and all other formalities to the satisfaction of the competent authority. He shall surrender back to the jail authority, after the expiry of the parole period.

10. A copy of this order be brought to the notice of the Chief Secretary, Punjab for onward circulation to all the District Magistrates in the State of Punjab and also to Director General of Police (Prisons), Punjab.

11. Petition stands allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

January 31, 2023
Naveen

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes