

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRM-167-2023 IN/AND
CRWP-12043-2022 (O&M)
DATE OF DECISION: 05.05.2023

IQBAL SINGH

.....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**Present: Ms. Bhupinder Pal Kaur, Advocate,
for the applicant-petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARPREET KAUR JEEWAN, J.**CRM-W-167-2023**

In pursuance of the order dated 22.12.2022, this application has been filed by the applicant-petitioner seeking permission to place on record a copy of the judgment of the conviction dated 05.04.2022, passed by learned Additional Sessions Judge, Moga, as Annexure P-3 with the accompanying petition.

The application is allowed subject to all just exceptions and the aforesaid copy of the judgment is taken on record as Annexure P-3 with the accompanying petition. Office to tag the same at appropriate placed.

CRWP-12043-2022

1. Petitioner Iqbal Singh has challenged the order dated 27.10.2022 (Annexure P-2) whereby his application for grant of parole has been rejected by the District Magistrate, Moga.

2. Learned counsel for the petitioner has submitted that the petitioner was arrested and ultimately convicted on 19.04.2022 and sentenced for rigorous imprisonment for life by the learned Additional Sessions Judge, Moga, in case FIR No. 138, dated 02.09.2018 under Sections 302/34 of the IPC, registered at Police Station Badhni Kalan, District Moga.

3. The conviction order has been challenged by the petitioner by way of filing an appeal bearing No. CRA-D-481-2022 before this Court. The petitioner is in custody since 05.09.2018. His request to meet his family member and to look-after his household affairs by way of releasing him on parole has been rejected by respondent No. 3-District Magistrate, Moga, despite the fact that the Superintendent of Central Jail, Faridkot (respondent No. 4) initiated and recommended eight weeks' parole of the petitioner. Rejection of grant of parole to petitioner is stated to be contrary to the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act').

4. Learned counsel for the State while referring to the reply, dated 31.01.2023, filed by Sh. Rajiv Kumar Arora, PPS, Superintendent, Central Jail, Faridkot, on behalf of respondents No. 2 to 4, pointed out that the Superintendent of Police, Moga, vide letter No. 10917/CAC-3, dated 01.10.2022 (paragraph 5 thereof), submitted that there is an apprehension of the breach of State's security and maintenance of public order in case the applicant is released on parole. The complainant Charan Singh, son of Bhan Singh has also shown an apprehension of threat to his life and property and to his family members.

5. As per the custody certificate, (Annexure R-1) the petitioner has undergone a total period of custody of 04 years, 04 months and 25 days. The request of the petitioner for grant of parole was declined by the District Magistrate, Moga (respondent No. 2), primarily on the ground that the parole has not been recommended by the Senior Superintendent of Police, Moga (respondent No. 4) and in view of the apprehension of threat to the complainant Charan Singh. The District Magistrate has also observed that it has been found from the secret sources during the inquiry that the petitioner can take part in illegal activities, if he is released on parole.

6. The reasons recorded by the District Magistrate does not refer about his opinion based upon application of his free, independent and judicious mind regarding relevant statutory provisions. The relevant portion of the order of the District Magistrate dated 27.10.2022 (Annexure P-2) reads as under:-

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“In view of the facts mentioned above and the correspondence available on the file, it is clear that as per the report of the Senior Superintendent of Police, Moga, there is apprehension danger to the State Security/Maintenance of Public order if the convict Iqbal Singh son of Sohan Singh, resident of Village Raoke Kalan, Police Station Badhni Kalan, District Moga, is released on parole.

Because, the complainant has shown that his life and property as well as the life and property of the his family is in danger on release of this convict on parole because it has been found from the secret sources during the inquiry that this convict can take part in illegal activities on

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being released on parole. Apart from the above, no such reasons has been mentioned in the documents attached with the file according to which, the case may be considered under Section 3 of the Act for release on parole. So while exercising the powers under Section 6 of the Act, I hereby rejected the case of Convict Iqbal Singh son of Sohan Singh, resident of Village Raoke Kalan, Police Station Badhni Kalan, District Moga.”

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7. The temporary release of prisoners is dealt under by the provisions of “The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962”. Section 3 of the said Act deals with various contingencies upon which a prisoner can be temporarily released while undergone sentence. The said Section is reproduced as under:-

“3. Temporary release of prisoners on certain grounds:-

(1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoners if the State Government is satisfied that-

- (a) A member of the prisoner's family has died; or*
- (aa) husband of wife or son or daughter or mother or brother or sister or grand-father of grant-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or*
- (b) the marriage of the prisoners son or daughter is to be celebrated; or*
- (c) the temporary release of the prisoners is necessary for ploughing, sowing of harvesting or carrying on any other agricultural operation, on his land or any other land cultivated by him and no friend of the prisoner or a member of the prisoners family is prepared to help him in this behalf in his absence; or*

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*(cc) a lady prisoner is pregnant or is likely to deliver a child;
or*

(d) It is desirable so to do for any other sufficient cause

[Explanation:- *The expression “sufficient cause” includes-*

(1) Serious damage to life property of the member of the family caused by any natural calamity; or

(2) Critical condition of any member of the family on account of accident; or

(3) Delivery of child by the wife of the prisoner.]

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), fifteen days;

(b) where the prisoner is to be released on the ground specified in clause (aa) or clause (b) of clause (c) or clause (d) of sub-section (1), eight weeks; and

(c) where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days) prior to the date of delivery of child and sixty days after delivery of child.

2-A The total period of temporary release of the prisoner, excluding the release availed of,-

i. On the death of a family member of the prisoner; or

ii. By a female prisoner on account of delivery of child, as the case may be shall not exceed sixteen weeks, during a calendar year and shall be availed on quarterly basis:

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a one time measure on prodata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is own temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so:

Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases

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Act, 1897, the State Government may, by a special notification published in the official gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis.

(3) The period of release under this Section shall not count towards the total period of the sentence of the prisoner.

(4) The State Government may by notification authorize any officer to exercise its power under this Section in respect of all or any of the grounds specified therein.”

8. As per sub-section (1) (d) of Section 3 of the Act, upon the satisfaction of the State Government in consultation with the District Magistrate, a prisoner can be temporary release for any sufficient cause. As per the custody certificate, Annexure R-1, attached with the reply filed by the State, the petitioner has undergone a total period of 04 years, 04 months and 25 days as on 31.01.2023 and during this period he has never been released even once on parole. Even during the trial, he was in custody for a period of 03 years, 07 months and 13 days. The petitioner has requested for his temporary release to meet his family members and to look-after his household affairs. To meet their families by the prisoners is very essential for their emotional health and certainly it is a “sufficient cause” to release a prisoner on parole. The petitioner is not a hardcore prisoner. Neither there are any grounds for declining him parole as mentioned under Section 5-A of the Act.

9. The provisions of parole and furlough are based on humanistic approach and while dealing with the said provisions, the Hon'ble Apex Court in Asfaq vs. State of Rajasthan and others 2017 (15) SCC 55 held as under:-

“15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) *Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.”*

10. Keeping in view the above, we are of the considered opinion that the order dated 27.10.2022 (Annexure P-2) passed by the District Magistrate, Moga, is not legally sustainable and is accordingly set aside.
11. Consequently, the petition is allowed and the petitioner Iqbal Singh is granted the parole for a period of 7 weeks subject to the condition that he would report to the Station House Officer of the concerned Police Station once in a every week on Monday.
12. Pending miscellaneous application (s), if any also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

May 05, 2023
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Whether Speaking	Yes/No
Whether Reportable	Yes/No