

276

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

CRWP-337 of 2024

Date of Decision:20.02.2024

VIJAY KUMAR ALIAS BUNTY AND ANOTHER

... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Satinder Kaur, Advocate,
for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

.....
SANJIV BERRY, J. (ORAL)

The instant petition has been filed under Article 226/227 of the Constitution of India, read with Section 3(1) (a) (c) (d) of the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962 (hereinafter referred to as 'the Act' for short) has been preferred for issuance of appropriate writ in the nature of Certiorari for quashing of the impugned orders dated 10.11.2023 (Annexure P-2 and P-3) as well as the order dated 25.09.2023 (Annexure P-4) passed by respondent No.4 and 5 respectively whereby the request of the petitioners for temporary release/parole for a period of 8 weeks was rejected without any valid basis.

2. In nutshell, the facts and circumstances of the case are that the petitioners after having been arrested in case FIR No. 190 dated 20.11.2016

under Section 307, 324, 327, 326, 201, 148, 149 of IPC Police Station Division No.5, District Jalandhar (Commissionerate), faced the trial and were ultimately convicted vide order dated 30.07.2019 passed by the Court of learned Additional Sessions Judge, Jalandhar and sentenced as under:-

Petitioner No. 1- Vijay Kumar @ Bunty

Under Section	Sentence	Fine
324 IPC	Rigorous imprisonment for a period of 1 ½ years	₹2000/- in default of payment of fine undergo R.I for two months.
307/34 IPC	Rigorous imprisonment for a period of six years.	₹15,000/- in default of payment of fine undergo R.I for six months.
324/34 IPC	Rigorous imprisonment for a period of 1 ½ years	₹2000/- in default of payment of fine undergo R.I for two months.

Petitioner No. 2- Shanty @ Haveli

Under Section	Sentence	Fine
324 IPC	Rigorous imprisonment for a period of 1 ½ years	₹2000/- in default of payment of fine undergo R.I for two months.
307 IPC	Rigorous imprisonment for a period of six years.	₹15,000/- in default of payment of fine undergo R.I for six months.
324/34 IPC	Rigorous imprisonment for a period of 1 ½ years	₹2000/- in default of payment of fine undergo R.I for two months.

3. The petitioners thereafter preferred the appeal CRA-S-2340 of 2019 and the same was dismissed by this Court vide order dated 26.08.2022 and against the said order SLP is pending before Hon’ble Supreme Court. The petitioners moved applications for grant of temporary release/parole for 8 weeks to meet their family members, however vide impugned orders (Annexure P-2 and P-3) the learned Deputy Commissioner, Jalandhar (Respondent No.5) rejected the request, which have been assailed by way of present petition.

4. It is contended by learned counsel for the petitioners that the petitioners were remained on parole for various occasion totaling to 1 year 9 months and 9 days and there is no complaint whatsoever received by the authorities regarding any misconduct of the petitioners during the concession of parole. He contends that the petitioners were convicted vide judgment dated 30.07.2019 in the aforesaid case and challenged the conviction and order of sentence and the appeal preferred by the petitioner in this Court in CRA-S-2340 of 2019 which was dismissed and the SLP has been filed before the Hon'ble Supreme Court. He contends that in the meanwhile the petitioners have applied for grant of temporary release/parole for 8 weeks period, in order to meet their family members but the same have been declined by respondent No.4 on flimsy grounds, without there being to support such apprehension and as a result the lawful right of the petitioners have been wrongly declined. He prays for acceptance of the petition.

5. Upon notice of motion being issued, the learned counsel for the State appeared on behalf of respondents had filed reply dated 30.01.2024 also custody certificate dated 19.02.2024. Learned counsel for the State by referring to the reply (supra) has opposed the request by submitting that the competent authority found there being possibility of petitioners engaging in conflict with opposite party, leading to untoward incidents and may abscond during parole besides their being apprehension of breach of peace and security of the State as well.

6. After considering the respective submissions and perusing the record, it transpires that the petitioners after having been convicted in the aforesaid case for having committed offences punishable under Section 307, 324, 327, 326, 201, 148, 149 of IPC were sentenced to undergo

Rigorous Imprisonment for 6 years and fine of ₹19,000/- vide judgment dated 30.07.2019. Petitioners have filed appeal No. CRA-S-2340 of 2019 which was dismissed by this Court on 26.08.2022 and the same was challenged in the Hon'ble Supreme Court by way of SLP which is pending adjudication. The petitioners have been in custody in this case for a period of 4 years and 01 month and 12 days including 2 years 10 months and 06 days after conviction and remained on parole for 1 year 8 months and 24 days. By way of the present petition petitioners are seeking relief of parole to meet their family members.

7. It is worth mentioning here that the cases for grant of temporary release on parole were duly forwarded and initiated but were rejected by Deputy Commissioner Jalandhar vide orders dated 10.11.2023 (Annexure P-2 and P-3) on the basis of the report provided by the Commissioner of Police, Jalandhar (Annexure P-4) wherein it has been mentioned that if petitioners are granted concession of parole there is every possibility of petitioners engaging in conflict with opposite party, leading to untoward incidents and may abscond during parole besides their being apprehension of breach of peace and security of the State as well.

8. It is relevant to mention here that Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, permits temporary release of prisoner on parole on the grounds as mentioned therein. The petitioners have never misused the concession of parole and seeks parole to meet their family members. The concession of parole to a convict is regulated by the statute and the authorities, thereunder cannot act arbitrarily, capriciously or without due application of mind. The decision on such application of convict has to be well reasoned and speaking one.

9. In this context, it is worth mentioning here that the Hon'ble Division Bench of this Court in ***Jugraj Singh @ Bhola Vs. State of Punjab and others, 2010 (25) R.C.R. (Criminal) 138*** has held as under:-

“It is also conceded position that the petitioner can be temporarily released on parole for four weeks under Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct Prisoners(Temporary Release) Act, 1962 (hereinafter referred to as 'the Act') to enable him to meet his family members. 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. In the instant case, no such strong material or basis has been relied upon by the respondents while rejecting the prayer of the petitioner for releasing him on parole for four weeks to meet his family members.”

A perusal of the above-said judgment would show that it has been observed that a convict can be temporarily released on parole under Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 to enable him to meet his family members and the release of a convict on parole is a wing of reformatory process.”

10. A Division Bench of this court in ***Gursahib Singh Vs. State of Punjab and others***” passed in ***CRWP-867-2021***, decided on 31.05.2022 has held as under:-

“The present petition has been filed for release of the petitioner on parole raising challenge to the order dated 15.05.2020 (Annexure P-2) wherein, the Senior Superintendent of Police, Tarn Taran gave an adverse recommendation regarding the release of the petitioner on account of the fact that he is habitual of consuming intoxicants and while on parole, he could cause threat to peace and may indulge in selling

intoxicating substances and may be declared as a proclaimed offender. Keeping in view the adverse recommendation, the rejection order dated 19.05.2020 has been passed by the Deputy Commissioner, Tarn Taran (Annexure R-2/T).

The reasoning given in the said order is that in view of the adverse recommendation that the convict is a drug addict and if released on parole, he could harm peace and there is apprehension that he would again be involved in drug trafficking and there are chances of absconding also, the rejection was there.

We are of the considered opinion that the order is de hors the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (in short 'the 1962 Act') and has lost sight of the purpose for which the said Act has been promulgated. A perusal of the custody certificate dated 30.05.2022, which has been filed today by the State and which is taken on record, would go on to show that the petitioner has undergone actual period of 2 years, 11 months and 16 days by now on account of the conviction which has been recorded of 12 years under Section 18 of the Narcotic Drugs and Psychotropic⁵ of 8 Substances Act, 1985 (in short 'the NDPS Act') on 18.01.2020. It is a matter of record that he has also been convicted for a period of 4 years and 6 months in FIR No. 106 under Section 21, 61 and 85 of the NDPS Act and also was involved in FIR No. 22 dated 03.02.2004 under Section 61 of the Punjab Excise Act, 1914. The custody certificate would also go on to show that he has not been granted the benefit of parole since the date of his conviction. A period of more than 2 years has gone by.

xxx xxx xxx xxx xxx xxx xxx

The ground that there is an apprehension that he would be again involved and that he may abscond are mere imaginations of the authorities as such. It is the duty of the State itself that the convict should not indulge in such activities and preventive measures should be taken and on account of such apprehensions, the benefit of the release cannot be denied. The earlier involvement was of the year 2005 and much water has flown down after that. He is already suffered imprisonment for 4-1/2 years and, therefore, for the same, he cannot be penalized twice by denying him the benefit of parole.

Accordingly, we are of the considered opinion that the reasoning given in the impugned order 15.05.2020 (Annexure P-2) and the subsequent order passed by the Deputy Commissioner 19.05.2020 (Annexure R-2/T) are not justified and do not stand reason. They are accordingly quashed and a

writ of mandamus is issued to release the petitioner on parole for a period of 4 weeks. He shall surrender back to the Jail Authorities on the expiry of the said period.

The petition stands disposed off accordingly."

11. On the same aspect is also the judgment of Hon'ble Division Bench of this Court in ***CRWP No. 9165 of 2022, Amarjit Singh @ Kala @ Mama vs. State of Punjab and others*** decided on 23.01.2023; *CRWP No. 10075 of 2022 decided on 19.01.2023 titled as Shiv Kumar @ Shiva vs. State of U.T. Chandigarh & others.*

12. Considering all these facts and circumstances in the light of the law settled in the aforesaid judgments it is observed that in the present case admittedly the petitioners have been in custody for more than 4 years and have availed the concession of parole for 1 year 8 months and 24 days and there is no complaint whatsoever received by the authorities regarding any misconduct on their part while being granted concession of parole. The apprehension raised by Commissioner of Police Jalandhar appears to be baseless and result of hypothetical thinking without there being any basis, specifically when the petitioners have already availed parole for a total period of 1 year 8 months and 24 days and there is not even single instance of misconduct or misuse of concession of parole. It would be apt to say that such apprehension raised by the authorities are nothing but mere imagination. In the absence of any specific report to form basis for such apprehension of the authority concerned, it would be nothing but a mechanical order passed on the basis of the mere conjectures and surmises the concession of parole is regulated by the statute and the authorities nominated thereunder are expected to perform duty to achieve the objective of the statute. It is not expected from them to act arbitrarily, capriciously and

without due application of mind nor are they expected to take decision on such like application in a mechanical manner.

13. Thus, considering all the above facts and circumstances, it is observed that by way of present petition, the petitioners have sought temporary release for a period of 8 weeks for the purpose of meeting their family members and they been in custody for more than 4 years and on parole for 1 year 8 months and 24 days without any misuse or misconduct of concession of parole, therefore, in this backdrop passing of the impugned order by the competent authority vide orders dated 10.11.2023 (Annexure P-2 and P-3) and order dated 25.09.2023 (Annexure P-4) are nothing but orders passed in a mechanical manner without there being any sustainable reasons, purely based on surmises and conjectures, orders being not sustainable in the eyes of law and are hereby set aside.

14. As a consequent, the petitioners are ordered to be released on parole for a period of 8 weeks from the date of release subject to their furnishing personal/surety bonds to the satisfaction of the concerned District Magistrate and in addition concerned District Magistrate, may impose such conditions as may be necessary to secure the presence of the petitioner in jail after the parole is over and to ensure that the temporary release is not misused.

15. Petition, accordingly is disposed of.

(SANJIV BERRY)
JUDGE

20.02.2024
Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No

Gyan Chand
2024.02.23 16:24