

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

CRWP-495-2024 (O&M)

Reserved on: 25.01.2024

Pronounced on: 29.01.2024

2024:PHHC: 011180

KULDEEP SINGH @ BHOORI

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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

Mr. Madhur Sharma, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this Criminal Writ Petition filed under Article 226/227 of the Constitution of India read with Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 [for short 'the 1962 Act'], petitioner prays for issuance of directions to the respondents to grant him 8 weeks parole so as to meet his family members including ailing mother and to make necessary arrangement for her basic needs.

2. Petitioner was convicted in case FIR No.23 dated 15.02.2017, registered at Police Station Balachaur, for offence under Sections 15 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'] vide judgement dated 23.09.2021 passed by Id. Special Judge, SBS Nagar; and was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of ₹1 lakh with default sentence vide separate order dated 28.09.2021. Appeal bearing CRA-S-1568-2021

filed by the petitioner, has been admitted by this Court and recovery of fine was stayed.

3. Ld. counsel for the petitioner submits that petitioner had applied for grant of parole for the period of 8 weeks. Application was duly forwarded by respondent No.3-Superintendent, Central Jail, Ludhiana to respondent No.2-Deputy Commissioner, District SBS Nagar, but the same was declined on the ground that he is a habitual offender and can be a threat to the Society due to his involvement in other cases. Ld. counsel contends that apart from the present case arising out of FIR No.23 dated 15.02.2017, registered at Police Station Balachaur, petitioner is a convict in one more case arising out of FIR No.59 dated 29.04.2017 under Sections 21 & 22 of the NDPS Act, against which his criminal appeal bearing CRA-S-1569-2021 is pending. Still further, it is contended that releasing the petitioner on parole cannot be danger to peace or security to anyone in the village or to the society and that as per the consistent view taken in the several judgments, grant of parole is a part of reformatory process and denial of the same shall be grave abuse of the Constitutional rights. Ld. counsel for the petitioner has further referred to Sections 3, 4 & 6 of the 1962 Act and has prayed for issuing the necessary Writ in the nature of mandamus by directing the respondents for his release on 8 weeks parole.

4. As per the status report filed by way of affidavit dated 25.01.2024 of Shri Sham Sunder Sharma, PPS, Deputy Superintendent of Police, Sub Division, Balachaur, District Shaheed Bhagat Singh Nagar, on behalf of respondents No.4 & 5, petitioner and co-accused were convicted for keeping in possession of 54 kg of poppy husk. Application moved by

the petitioner for parole for a period of 34 days was forwarded to the District Magistrate, SBS Nagar, which was duly processed by seeking report from the Senior Superintendent of Police, SBS Nagar. It was reported by SSP that petitioner was a habitual drug peddler as per the confidential inquiry conducted, and that he was involved in several cases of NDPS Act and in case he is released on parole, he can again indulge in the business of drug trafficking, which can disturb peace of the society, which may also be danger to the State security. The status report also gives details of four cases showing the involvement of the petitioner, but as per those details, petitioner has already been acquitted in two of the cases; whereas he has been convicted in two cases, including the case in hand i.e. arising out of FIR No.23 dated 15.02.2017, registered at Police Station Balachaur; and second conviction was recorded in case FIR No.59 dated 29.04.2017 under Sections 21 & 22 of the NDPS Act, the details of which have already been given by the petitioner. Prayer is made for rejecting the petition.

5. I have considered submissions of both the sides and have appraised the record.

6. The application of the petitioner for release on parole has been declined on the ground of his conviction in a previous case, on the basis of which it has been concluded that he is a habitual drug peddler and that his release may disturb the peace of society and may cause danger to the society. The question arises, whether these grounds can be justified to decline parole to the petitioner?.

7. In *Manga @ Manga Singh Vs. State of Punjab and another* [CRWP-4593-2020 decided on 26.08.2020], a Coordinate Bench of this

Court was considering a similar question for grant of parole in respect of a petitioner, who was also a convict in NDPS case and sentenced for 10 years rigorous imprisonment and apart from that case in which he was seeking parole, he was also convicted in another case under Section 15 of the NDPS Act and against which appeal was pending before this Court. Not only this, petitioner in that case was also involved in four more cases. This Court referred to Section 3 & 4 of the 1962 Act and then held as under: -

“Thus, sufficient powers as such are vested with the authority to enforce that the prisoner who commits any offence during his temporary release has to suffer the necessary consequences. It is apparent that the petitioner's case as such does not fall under the two exclusions, whereby there is danger to the security of the State or is prejudicial to the maintenance of public order, which has also not been recorded by respondent No.2.”

After referring to catena of authorities, it was concluded by this Court, as under: -

“For the reasons given above, this Court is of the opinion that merely because the petitioner is involved in four other cases, would not be a valid ground to deny him release on parole. It cannot be disputed that the purpose of release is to make sure that the prisoner as such meets with his family members and the general public. It is a reformatory process, whereby a convict is reintroduced to normal life and, thus, by declining the said benefit on an application, which was duly recommended by the Superintendent of Jail, the reasoning given as discussed above, would come within the vice of irrationality and perversity, in spite of the settled position of law.”

8. Besides above, it has been observed by this Court in case of **“Narinder Singh @ Nindi v. State of Punjab and others”**, 2020(2) DC (Narcotics) 253 that 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.

9. Further, whether rejection of application 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.

10. 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.”

11. 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.”

12. 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 atlarge. 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.”

13. 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 ”

14. 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. In **Kuldeep vs. State of Haryana 2019 (4) RCR (Criminal) 522**, it has been held by this court that involvement of petitioner in various cases or his chances of absconding is no ground to deny parole.

15. In **Harkinder Singh @ Mangi Vs. State of Punjab and others [CRWP-11124-2023 decided on 11.12.2023]**, case of the petitioner for release on parole had been rejected because of his conviction in two other

cases. A Division Bench of this Court held the order of the respondent-authorities to be without application of mind and so, unsustainable and allowed the petition by setting aside the impugned order.

16. In *Resham Singh Vs. State of Punjab and others [CRWP-1983-2023 decided on 12.04.2023]*, case of the petitioner for release on parole was rejected on the ground that in case of release, there could be likelihood of chances that he would indulge in similar activities and committing breach of peace. This Court relied on *Jugraj Singh @ Bhola (Supra)* and *Babu Singh Vs. State of UP, 1978(1) SCC 579* held that petitioner could not be deprived of the company of his family members and to meet his ailing mother.

17. Keeping in mind the legal position as above, it is noticed that in the present case, no material whatsoever has been placed on record by the respondent-State to support their stand that in case petitioner is released on parole, he may indulge in similar activities. Simply because he has been convicted in one more case pertaining to NDPS Act, cannot be a ground to reject the application for parole. In case petitioner indulges in any criminal offence during the release period, sufficient safeguards have been provided under Section 4 of 1962 Act with necessary consequences.

18. In view of the above discussion, the petition is allowed. The petitioner is ordered to be released on parole for a period of five weeks, to be effective from the date of his 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 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 warrant would be cancelled as provided in Rule 4 of Punjab Good Conduct Prisoners' (Temporary Release) Rules, 1963.

Allowed accordingly.

(DEEPAK GUPTA)
JUDGE

29.01.2024
Vivek

- | | |
|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |