

CRWP-1224-2024

2024.PHHC:143837-DB



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

CRWP-1224-2024

Date of Decision: November 05, 2024

LALIT KUMAR @ BABBAL

.....Petitioner

Versus

STATE OF PUNJAB AND ORS

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Brijesh Nandan, Advocate for the petitioner (through VC).

Mr. H.S. Deol, Sr. DAG, Punjab.

LISA GILL, J.

1. Prayer in this petition is for setting aside order dated 11.01.2024 passed by respondent No. 2 whereby request for parole by petitioner has been rejected on the ground that there is threat to law, order and State security in case petitioner is released on parole. It is mentioned that there is apprehension of breach of peace, security and maintenance of public order and that petitioner may indulge in other crimes.

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2. Petitioner was nominated as accused in FIR No. 89 dated 14.06.2016 under Sections 365, 364A, 482, 342, 307, 34, 325, 482 IPC and Sections 25, 27, 54, 59 of Arms Act registered at Police Station Division No. 1, Jalandhar. He has been convicted by learned Additional Sessions Judge, Jalandhar vide judgment/order dated 29.09.2022 as under:-

Under Section	Imprisonment and Fine	In default of payment of fine
364A IPC	To undergo Life Imprisonment and Rs.1,00,000/- as fine	R.I. for 2 years
342 IPC	One year and Rs.1000/- as fine	R.I. for one month
148 IPC	Two years and Rs.2000/- as fine	R.I. for two months
307 IPC	Five years and Rs.5000/- as fine	R.I. for three months
325 IPC	Two years and Rs.5000/- as fine	R.I. for three months
482 IPC	One year and Rs.2000/- as fine	R.I. for two months
27 of Arms Act	Three months and Rs.5000/- as fine	R.I. for three months

3. Learned counsel for petitioner submits that petitioner is entitled to concession of parole in terms of applicable provisions of Punjab Good Conduct of Prisoners (Temporary Release) Act, 1962 as he fulfills all requisite conditions. His request has been rejected in an illegal manner on grounds which are absolutely unjustified. During period of incarceration, his conduct has been good. There is no material on record to indicate that there is any apprehension of breach of peace or endangerment of security of State and maintenance of public order in case parole is granted to the petitioner. It is, thus, prayed that this petition be allowed.

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4. Learned counsel for State has opposed this petition. Reference is made to reply filed on behalf of respondent No. 4 by way of affidavit dated 08/09.04.2024 of Sh. Kulwant Singh, Superintendent, Central Jail, Kapurthala. It is submitted that petitioner is a member of gang of robbers. As per communication dated 06.12.2023 from SSP, Tarn Taran, it is reported that there is apprehension of danger to peace and harmony in case petitioner is released on parole and that he may even commit any other offence. Petitioner is stated to be involved in four other cases.

5. Learned counsel for petitioner, at this stage, points out while referring to para 7 of said affidavit dated 08/09.04.2024 that petitioner is on bail in two of the cases, acquitted in one and was convicted in the fourth with imposition of fine of Rs.100/-. Same cannot be an impediment to grant of parole.

6. We have heard learned counsel for parties and have perused the file.

7. As per provisions of Punjab Good Conduct of Prisoners (Temporary Release) Act, 1962 and as held in a plethora of cases, temporary release of a prisoner on parole or furlough can be denied only if such release is likely to endanger security of State or maintenance of public order. Competent authority is under a duty to take a considered decision in this regard after due regard to the factual matrix. Such decision has to be based or founded on substantial material to indicate such possibility. This exercise is not an empty formality.

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8. In the case of **Bansi Lal versus State of Punjab and others** **2016 (4) RCR (Criminal) 1017**, it has been held by Division Bench of this Court as under:-

“ 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.”

9. Perusal of file reveals that there is no substantial material on record to indicate that there is apprehension arising regarding endangerment to State security or maintenance of public order, except reliance on communication dated 06.12.2023 from SSP, Tarn Taran, copy of which is

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neither on record nor available with learned counsel for State, who was unable to refer to any detail of specific material to substantiate the basis of such recommendation. It is a settled position that parole is a progressive correctional measure to enable rehabilitation and ensure assimilation in society after the period of incarceration. It is incumbent upon the authorities to take action having due regard to the specific provisions of law while adjudicating on the requests for parole.

10. Keeping in view the facts and circumstances as above, impugned order dated 11.01.2024 is not sustainable. Present case calls for reconsideration of the matter by competent authority in accordance with law and parameters as laid down for grant of parole.

11. Accordingly, order dated 11.01.2024 in the petition is set aside. Matter is remitted to the competent authority, who shall reconsider the same and decide the same expeditiously and definitely within a period of four weeks from today, by passing a speaking order, in accordance with law. Copy of said speaking order be conveyed to petitioner.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

November 05, 2024
Rts

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