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

CRWP-5395-2023 (O&M)
Date of Decision: 06.05.2024

Kulwinder Singh alias Taina

.... Petitioner

Versus**State of Punjab and others**

.... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Mr. Navjot Singh, Advocate
for the petitioner.

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

AMARJOT BHATTI, J.

1. Petitioner Kulwinder Singh alias Taina has filed criminal writ petition with a prayer to quash/set aside impugned order dated 10.04.2023 (Annexure P-2) passed by respondent No. 3 District Magistrate, Ferozepur, being illegal, vague, unreasonable and arbitrary with further prayer to issue directions to respondents to release petitioner for eight weeks parole to enable him to meet and look-after his family members and to settle household affairs in accordance with provisions of Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, Amended Act 2015-16 and Punjab Government Notification dated 13.12.2018 or issue any other appropriate direction as this Court may deem just and proper.



2. Petitioner, vide judgment dated 04.01.2019 has been convicted and sentenced under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') to undergo rigorous imprisonment for 11 years and to pay fine of Rs. 1,50,000/-, in default of payment of fine to further undergo imprisonment for one year, in case bearing FIR No. 132 dated 23.08.2015 under Sections 21, 25, 29 of NDPS Act, Police Station Makhu, District Ferozepur. Petitioner filed criminal appeal bearing No. CRA-D No. 54 of 2019 against the aforesaid judgment of conviction and order of sentence which stands admitted.

3. Petitioner applied for eight weeks parole to jail authorities (respondent No. 4) along with Panchayatnama (Annexure P-1) under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 to meet his family members and look-after household affairs. The jail authorities initiated and recommended his application and forwarded to District Magistrate, Ferozepur (respondent No. 3) vide letter No. 1431 and to Director General of Police, Jail Department, Punjab, Chandigarh (respondent No. 2) on 21.03.2022. District Magistrate, Ferozepur forwarded his case to Senior Superintendent of Police, Ferozepur who did not recommend parole to petitioner. Accordingly, respondent No. 3 District Magistrate, Ferozepur rejected the application seeking eight weeks parole vide order dated 10.04.2023, Annexure P-2. In the said order there was reference of three other cases registered against petitioner i.e. present FIR in which he applied for parole. Second case bearing FIR No. 114 dated



16.07.2015 registered under Section 21 of NDPS Act at Police Station Makhu in which criminal appeal No. CRA-D-184 of 2022 has been filed against the judgment of conviction and same is pending in High Court and sentence will start after completion of sentence in present FIR. Regarding conviction, in FIR No. 98 dated 04.07.2015 under Sections 21, 22, 24, 25, 27, 28, 29, 30 of NDPS Act at Police Station Sadar Jalalabad, Fazilka, again criminal appeal No. CRA-S-3300 of 2019 has been filed in this High Court and sentence has been suspended. Copy of order dated 14.02.2020 in CRM No. 40800 of 2019 in the aforesaid appeal is Annexure P-3. Learned counsel for petitioner argued that mere conviction of petitioner in multiple cases cannot be a ground to reject parole. He has relied upon **judgment dated 26.08.2020** passed in **CRWP No. 4593 of 2020** title “*Manga @ Manga Singh Versus State of Punjab and others*” and 2016(4) RCR (Criminal) 1017 of Division Bench case title “*Bansi Lal Versus State of Punjab*”. Therefore, it is submitted that impugned order dated 10.04.2023 may kindly be set aside and petitioner may be released on parole for eight weeks by imposing suitable conditions.

4. Learned counsel for the State filed reply alleging that District Magistrate, Ferozepur has declined application filed by petitioner seeking parole of eight weeks by passing detailed order dated 10.04.2023, based on report filed by Senior Superintendent of Police, Ferozepur. Apart from present case, petitioner is convicted under two other FIRs registered under the provisions of NDPS Act as referred above, which are detailed in para No. 3 of reply. Petitioner was discharged in FIR No. 224 dated 14.09.2019



under Section 302, 120-B, 34 of IPC, Police Station City Ferozepur by the Court of learned Chief Judicial Magistrate, Ferozepur vide order dated 03.03.2020. Petitioner is facing trial in the Court of learned Chief Judicial Magistrate, Faridkot in FIR No. 332 dated 16.10.2021 under Section 42, 52-A of the Prisons Act, Police Station City Faridkot as one mobile phone was recovered from his possession while he was confined in prison. The application filed by petitioner was rejected as he could indulge in selling narcotic drugs or he could abscond during his parole. Copy of impugned order is Annexure R-2/R/T-2 (in vernacular).

5. Deputy Superintendent of Police, Zira also filed his reply by way of affidavit confirming registration of aforesaid FIRs. It was alleged that there is apprehension that in case he is released on parole he will misuse the concession and will again start smuggling, thus, considering all the facts, respondent No. 3 vide order dated 10.04.2023 rightly rejected the application filed by petitioner seeking parole.

6. We have heard arguments advanced by learned counsel for petitioner and learned counsel for State and have gone through the record carefully.

7. Application filed by petitioner seeking parole of eight weeks was rejected by learned District Magistrate, Ferozepur by passing impugned order dated 10.04.2023, Annexure R-2/R/T-2. As per custody certificate (Annexure R/1), petitioner has undergone custody as under :-

		Year		Month	Days
Under trial period	16.11.2015 to 03.01.2019	03		01	18



Conviction period	04.01.2019 to 25.07.2023	04	06	21
Total		07	08	09
(-) Less Parole Availed	NIL	00	00	00
Total Custody Period		07	08	09

8. Status of other FIRs as referred above is mentioned in custody certificate. Petitioner filed application seeking temporary release on parole. Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 reads 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 prisoner if the State Government is satisfied that -
[(a) a member of the prisoner's family has died; or
(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or]
(b) the marriage of the prisoner's son or daughter is to be celebrated; or
(c) the temporary release of the prisoner is necessary for ploughing, sowing or 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 prisoner's family is prepared to help him in this behalf in his absence;
[(cc) a lady prisoner is pregnant and is likely to deliver a child; or]



(d) *it is desirable to do so for any other sufficient cause.*

[Explanation. *The expression "sufficient cause" includes -*

(1) *serious damage to life property of the member of the family cause 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.]*

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9. It is settled position that normally temporary release on parole or furlough, as may be, is to be granted but can be declined, in case releasing authority is of the view that such release would be dangerous to security of the State or maintenance of public order. Section 6(2) of the Act provides for the same. Section 6 of the Act 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 -

(1) it shall not 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

(2) 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.”

10. Objectives of parole are twofold i.e. rehabilitation of offender and protection of society. The main purpose of parole is that prisoner can



maintain continuity together with his family, friends and community and at the same time to save prisoner from harmful effects of continuous prisoner life. Parole enables a prisoner to develop a feeling of self confidence that there is a life beyond prison. It helps prisoner to develop a sense of hope and active interest in his life with a view to rehabilitate the prisoner. Competent authority can always impose sufficient and necessary conditions while granting parole. Gainful reference at this stage can be made to the judgment of Coordinate Bench in **“Bansi Lal versus State of Punjab & Others”**, 2016(4) R.C.R. (Criminal) 1017, where it was observed as under :-

“11. During incarceration of a prisoner in jail after his conviction he is entitled for temporary release on parole which though is a concession and not a right. However, in order to reform a prisoner a periodic temporary release on parole for short duration is necessary. This is a welfare measure in the interest of a prisoner

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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 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.”

11. A Division Bench of this Court in the case of Manga @ Manga Singh Versus State of Punjab and others, 2020(4) R.C.R. (Criminal) 133 specifically held that merely because petitioner was



involved in four other cases cannot be a valid ground by itself to deny release on parole.

12. As per impugned order dated 10.04.2023 based on the report of Senior Superintendent of Police, Ferozepur, it is observed that in case petitioner is released on temporary parole, he can indulge in smuggling of narcotics and he may also abscond during parole. On this basis, prayer for parole was rejected by District Magistrate, Ferozepur by passing impugned order dated 10.04.2023 (Annexure P-2). Such mere apprehension is not a valid ground for rejection of application filed by petitioner seeking parole. Affidavit filed by Deputy Superintendent of Police, Zira and impugned order dated 10.04.2023 Annexure P-2 do not come to the aid of the State justifying denial of parole to petitioner. Consideration of the question whether release of petitioner on parole is likely to endanger security of State or maintenance of public order has clearly not been carried out by the competent authority. Cogent material to indicate the same rather than mere registration of various cases has to be available.

13. Considering the aforesaid facts and circumstances, impugned order dated 10.04.2023, Annexure P-2, passed by District Magistrate, Ferozepur is set aside being unsustainable, with further direction to District Magistrate, Ferozepur to reconsider the application filed by petitioner seeking parole in the light of aforesaid provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and discussion as above, within a period of four weeks of receipt of certified copy of the order.



- 14. Petition is accordingly disposed of.
- 15. Pending miscellaneous applications, if any, stand disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

06.05.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No