

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.261

CRWP-7414-2023

Date of decision: 03.04.2024

Sarabjit Singh @ Nannu

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Inderpreet Singh Kooner, Advocate
for the petitioner.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

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DEEPAK SIBAL, J. (Oral)

1. Through the present petition, the petitioner seeks issuance of directions to the State to release him on parole for 08 weeks so that he can meet his family members which includes his widowed mother and minor children.
2. FIR No.121 dated 08.07.2021 under Sections 376-AB, 323, 363, 366 and 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 was registered against the petitioner at Police Station Sadar Hoshiarpur, District Hoshiarpur. After investigation, the police filed a report under Section 173 Cr.P.C. on the basis whereof the petitioner was charged. Thereafter, the petitioner faced trial. Through judgment dated 15.11.2022 the petitioner was convicted by the Special Court, Hoshiarpur and on the basis thereof was sentenced to undergo rigorous imprisonment for 20 years, alongwith fine.

3. The conviction and sentence by the Special Court, Hoshiarpur was challenged by the petitioner before this Court through CRA-D-200-2023 which has been admitted for regular hearing. The same remains pending.

4. While undergoing his sentence, the petitioner applied to the State for the grant of parole, which through order dated 24.05.2023, was rejected by the District Magistrate, Hoshiarpur on the ground that the house of the victim was one and half kilometers away from the petitioner's residence and therefore, if released on parole, the victim's and her family's life and liberty would stand threatened.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short – the Act) contains the grounds on which a prisoner can be released on parole. The period for which a prisoner can be released on parole is provided under Sections 3, 3(2) and 3(2A) of the Act. Section 5-A of the Act provides that a hardcore prisoner can be allowed parole only in the circumstances so mentioned in Section 5-A(b) of the Act. The circumstances in which a prisoner may not be released on parole are found in Section 6 of the Act. Section 3, Section 5-A and Section 6 of the Act are reproduced below for reference:-

“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 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 prisoner's family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant and 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 or 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) or clause (c) 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 the date of 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 calender year and shall be availed of an 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 onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided that any prisoner, who is on 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 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 calender year, and may also waive

the condition of temporary release being availed of on quarterly basis.]

5-A Prisoner not entitled to be released in certain case.- Notwithstanding anything contained in Sections 3 and 4, --

(a) no prisoner shall be entitled to be released under this Act to whom the death sentence has been awarded or is a hardcore, prisoner;

(b) Notwithstanding anything contained in clause (a), hardcore prisoner may be allowed to be released temporarily on the ground specified in clause (a) or clause (b) of sub-section (1) of Section (3). However, extra conditions may be imposed on the prisoner at the time of temporary release or furlough after considering all the facts and circumstances of the case.

6. Cases where consultation with District Magistrate not necessary or where prisoners are not 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 authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State of maintenance of public order.”

7. The petitioner seeks parole to meet his family which includes his

widowed mother and his minor children. The petitioner is in custody for the last about 2 ½ years. He is not a hardcore prisoner. During the period of his imprisonment, he has not committed any jail offence.

8. In the afore facts, the petitioner can be denied parole in terms of Section 6 of the Act and that if his release is likely to endanger the security of the State or maintenance of public order.

9. A perusal of the impugned order reveals that the petitioner has been denied parole on the ground that the victim resides one and half kilometers away from the petitioner's residence and in case he is released on parole the life and liberty of the victim and her family members would be put to risk. In this regard the State also relies on the statement of the victim and her mother.

10. A perusal of the record reveals that presently the victim and her mother are both residing in Village Bodli Badoli, Police Station Maoga, District Ranchi, Jharkhand. Only some household articles of theirs are still lying at Village Bhootgarh in District Hoshiarpur. That being so, the ground on which the petitioner has been denied parole is found contrary to the facts on the record.

11. Further, the impugned order is dated 24.05.2023 but the statements of the victim and her mother which have been placed on the record by the State are dated 29.04.2024 and 14.08.2023, respectively. Thus, these statements were apparently recorded by the State after the passing of the impugned order and therefore, could not have been the basis of the impugned order dated 24.05.2023 through which the petitioner has been denied parole.

12. Even otherwise, on 24.05.2023, in terms of Section 6 of the Act,

the petitioner could have denied parole only if his release was likely to endanger the security of the State or maintenance of public order. In the facts of the present case, the petitioner's release on parole neither would endanger the security of the State nor would disturb public order.

13. In the light of the above, the impugned order is set aside with a direction to respondent No.3 to reconsider the petitioner's request for grant of parole, in accordance law.

14. The needful be done by respondent No.3 within three weeks.

15. The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

April 03, 2024
Jyoti 1

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