

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Criminal Writ Petition No. 9620 of 2023 (O&M)
Date of Decision: 24.01.2024

Kulbir Singh @ Goldy

..... Petitioner

Versus

U.T., Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Simranjeet Singh Sarwara, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, APP, U.T., Chandigarh

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition filed under Article 226 of the Constitution of India, seeks quashing of the order dated 31.08.2023 (**Annexure P-2**) passed by Inspector General of Prisons, U.T., Chandigarh, whereby an application moved by him for grant of parole, was declined.

[2] Learned counsel for the petitioner submits that primary ground for declining the prayer made by the petitioner was the non-recommendation of his case by the District Magistrate, based on report made by the Senior Superintendent of Police, SAS Nagar (Punjab), wherein it was recorded that the petitioner can again indulge himself in the drug business and there can be danger to the maintenance of public law and order / security. He points that the impugned order dated 31.08.2023 nowhere records any further details so as to support the reasoning mentioned therein; thus, the same is required to be set aside.

[3] On the other hand, learned counsel for U.T., Chandigarh, while relying upon the written statement, submits that besides the release of petitioner on parole being danger to the State Security, his involvement in two other cases (one of similar nature) was also an impediment in his release on parole.

[4] After hearing learned counsel for the parties and going through the records, I find substance in submissions made on behalf of the petitioner.

[5] A perusal of the impugned order dated 31.08.2023 shows that besides mentioning about the report by the District Magistrate, based on the information provided by the Senior Superintendent of Police, SAS Nagar (Mohali) (Punjab), no further details or reasons have been given while declining the prayer made by the petitioner-convict, as to how his release on parole would endanger the security of the State or the maintenance of the public law and order. The authority concerned, while passing the impugned order, cannot be permitted to act in a mechanical manner without even referring to the substantive material in the impugned order, relied upon for the purpose of arriving at its conclusion.

[5.1] In "**Jassa Singh @ Jassa v. State of Punjab**", reported as **2016 (5) RCR (Criminal) 522**, a Division Bench of this Court observed that parole is not liable to be denied on mere recording that prisoner on release would engage in smuggling activities causing danger to security of the country. Relevant para from this judgment is reproduced hereunder:-

"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 behaviour and will not indulge in any smuggling activities, besides, asking him to furnish heavy surety."

[5.2] Similarly, in "**Jugraj Singh @ Bhola v. State of Punjab and other**", reported as **2010 (25) RCR (Criminal) 138**, another Division Bench of this Court observed that 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. Relevant para from this judgment is reproduced hereunder:-

".....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....."

[5.3] A Coordinate Bench of this court in "**Jeet Singh v. State of Punjab**", reported as **2020(3) R.C.R.(Criminal) 516**, held that in the absence of any material to support the apprehension, parole cannot be denied on mere likelihood of involvement in similar offence while on parole as it

can not be taken as an active and real apprehension of threat to the security of the State or to the maintenance of public order. Relevant para from this judgment is reproduced hereunder:-

"13. In the backdrop of the case law discussed above, facts of the present case may be examined. There is nothing on record to show that conduct of the petitioner in jail has not been found good. The petitioner has never been released on parole earlier. He is involved in three other cases, out of which he was acquitted in one case and in the remaining two cases, he was convicted and sentenced to the period already undergone and was ordered to pay fine which he has deposited. No doubt, the other three cases in which the petitioner was involved were also under the Narcotic Drugs and Psychotropic Substances Act, 1985, yet the likelihood of his involvement in similar offence while on parole is not be taken as an active and real apprehension of threat to the security of the State or to the maintenance of public order as held in Manjit Singh @ Laddu's case (supra). Moreover, the respondents have not placed on record any material to support the apprehension. Merely on the basis of an apprehension, benefit of parole cannot be denied."

[5.4] Therefore, in view of the position of law as discussed above, parole cannot be denied to the petitioner on the grounds as stated in the impugned order. Learned State Counsel has tried to array an objection that the petitioner indulged himself in a similar activity once he was released on parole on the previous occasion, however, the same cannot be taken to reject his prayer now after a period of two years and two months as the benefit of parole, lastly was granted in favour of the petitioner in the month of November 2021. Further, necessary conditions may be imposed on the petitioner to allay this fear of the State.

[6]. The purpose for seeking parole of the petitioner is to meet his old aged parents, which in the facts and circumstances of the present case, can be held to be a sufficient cause. Reliance In this regard can be placed

upon a judgment of Division Bench of this Court in “**Iqbal Singh v. State of Punjab**”, reported as **2024(1) R.C.R.(Criminal) 271**, wherein, it was observed that to meet their families by the prisoners is very essential for their emotional health and certainly. Relevant para from this judgment is reproduced hereunder:-

“8. As per sub-section (1) (d) of Section 3 of the Act, upon the satisfaction of the State Government in consultation with the District Magistrate, a prisoner can be temporary release for any sufficient cause. As per the custody certificate, Annexure R-1, attached with the reply filed by the State, the petitioner has undergone a total period of 04 years, 04 months and 25 days as on 31.01.2023 and during this period he has never been released even once on parole. Even during the trial, he was in custody for a period of 03 years, 07 months and 13 days. The petitioner has requested for his temporary release to meet his family members and to look-after his household affairs. To meet their families by the prisoners is very essential for their emotional health and certainly it is a "sufficient cause" to release a prisoner on parole. The petitioner is not a hardcore prisoner. Neither there are any grounds for declining him parole as mentioned under Section 5-A of the Act.”

[6.1] Similarly in **Jeet Singh's case (supra)** as well, it was observed by this court that meeting parents who are of advanced age, would fall within the ambit of “sufficient cause” as mentioned in Section 3(1)(d) of Punjab Good Conduct Prisoners (Temporary) Release Act, 1962. Relevant para from this judgment is reproduced hereunder:-

“14. The petitioner has sought temporary release on two counts firstly, he claims that his parents are of an advanced age and there is no one to take care of them at this old age and secondly, he claims that his house is in need of repairs. The claim on both grounds has been verified by a Municipal Councillor, vide Annexure P-1. Though expression "sufficient cause" as mentioned in Section 3(1)(d) of 1962 Act, has not been defined, but the

reasons given by the petitioner for his release on parole will fall within the ambit of "sufficient cause" and therefore, his request is entitled to be accepted."

[7] Resultantly, the order dated 31.08.2023 (P-2) passed by the Inspector General of Prisons, U.T., Chandigarh, is set aside. The petitioner is ordered to be released on parole for a period of three weeks from the date of 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 warrants would be cancelled forthwith.

[8] The petition is **disposed off** accordingly.

January 24, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes