

CRWP-11479-2023
Date of decision: 04.03.2024

...PETITIONER

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bhagat Singh Ghuman, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

Prayer in the present petition filed under Article 226/227 of Constitution of India is for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 27.07.2023 (Annexure P-5) passed by respondent No.2/Ld. Deputy Commissioner-cum-District Magistrate, whereby, the case of the petitioner for grant of parole for a period of 08 weeks has been rejected.

2. The petitioner was convicted by learned Special Judge, Moga, vide judgment of conviction dated 21.04.2022 and he was awarded rigorous imprisonment for 10 years with fine of Rs.1,00,000/- in case FIR No.34 dated 20.03.1999 registered under Section 15 of NDPS Act, at Police Station Mehna, District Moga along with default mechanism.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is 58 years of age and is suffering from heart disease and is undergoing treatment from Guru Gobind Singh Medical College Hospital, Faridkot. Earlier also, the stent has been placed for opening the blockage in the

blood vessels and the petitioner still feels discomfort and breathlessness and he had applied for his temporary release on medical parole for getting his treatment done, but the application for temporary release was rejected by the concerned Magistrate.

4. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that in case, the petitioner is released, there would be an apprehension of breach of security of State and maintenance of public order. He further submits that the petitioner was earlier released on parole, however, during the parole period, he had misused the concession and was arrested in one more case under the NDPS Act.

5. Learned counsel for the petitioner further relies upon Rule 4 of Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 and submits that if a convict commits any offence during his parole, he is liable for cancellation of release warrants. The case, in which, the petitioner was found involved, subsequently, the petitioner has already undergone the sentence.

6. Having heard the learned counsel for the parties and after the perusal of the record, this Court finds that the opinion formed by the concerned Magistrate is not based upon the objective assessment made by the police authorities. The case of the petitioner is covered by the judgment of the Division Bench of this Court passed in ***Sonu @ Arun vs. State of Haryana and others*** bearing No.***CRWP-1177 of 2015***, where, in similar circumstances, this Court allowed the prayer of the petitioners for parole.

7. Keeping in view the provisions contained in the Article 21 of the Constitution of India, the petitioner cannot be deprived of his right to seek treatment. Accordingly, the present petition is allowed and the impugned order dated 27.07.2023 (Annexure P-5) is hereby set aside.

8. The petitioner is directed to be released on parole for a period of 08 weeks, from the date of his release, on furnishing requisite surety bonds to the satisfaction of District Magistrate/concerned Jurisdictional Magistrate or any other condition imposed by the Magistrate concerned. After completion of parole period, the petitioner shall surrender on the last date at 5:00 PM at the jail gate.

March 04, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |