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

**CRWP-11572 of 2023
Date of Decision:20.02.2024**

DAVINDER SINGH @ GOPI

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Anupam Bhanot, Advocate,
for the petitioner.

Mr. Daksh Prem Azad, AAG, Punjab.

.....
SANJIV BERRY, J. (ORAL)

The instant petition has been filed under Article 226/227 of the Constitution of India, read with Section 3(1) (A & D) of Punjab Good Conduct Prisoner Temporary Release Act, 1962 (hereinafter referred to as 'the Act', for short) has been preferred for issuance of appropriate writ in the nature of Certiorari for quashing of the impugned order dated 09.08.2023 (Annexure P-1) passed by respondent No.2 whereby the request of the petitioner for temporary release/parole for a period of 3 weeks was rejected without any valid basis.

2. In nutshell, the facts and circumstances of the case are that the petitioner after having been arrested in case FIR No. 156 dated 17.11.2011 under Section 15 of the NDPS Act read with Section 120-B, 201 of IPC

Police Station Bhogpur, District Jalandhar, faced the trial and was ultimately convicted vide order dated 15.02.2020 passed by the Court of learned Judge Special Court, Jalandhar and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of ₹1,00,000/-.

3. The petitioner thereafter preferred the appeal before this Court which is pending admitted vide CRA-S-523 of 2022. The petitioner moved an application for grant of temporary release/parole for 3 weeks to meet his family members wherein the statement of respectable persons of the village were recorded who pleaded no objection in grant of parole to the petitioner, however vide impugned order dated 09.08.2023 (Annexure P-1) the learned District Magistrate, Jalandhar (respondent No.-2) rejected the request, which has been assailed by way of present petition.

4. It is contended by learned counsel for the petitioner that the petitioner after being apprehended in the aforesaid case was granted concession of bail on 14.11.2017 by this Court in CRM-M-38028 of 2017 (Annexure P-2) and he never misused the concession of bail. She contends that the petitioner was convicted vide judgment dated 15.02.2020 in the aforesaid case and he has challenged the conviction and order of sentence and the appeal preferred by the petitioner has been admitted by this Court in CRA-S-523 of 2022. She contends that in the meanwhile the petitioner had applied for grant of temporary release/parole for 3 weeks period, in order to meet his family members but the same has been declined by respondent No.2 on flimsy grounds, and as a result the lawful right of the petitioner has been wrongly declined. She prays for acceptance of the petition.

5. Upon notice of motion being issued, the learned counsel for

the State appeared on behalf of respondents and filed reply dated 16.02.2024 by way of affidavit of Deputy Superintendent of Police, Sub Division Adampur, Jalandhar (Rural) and also reply dated 07.02.2024 submitted by Superintendent Central Jail, Shri Goindwal Sahib. Learned counsel for the State by referring to the reply (supra) has opposed the request by submitting that the competent authority had found there being possibility of petitioner indulging in smuggling of narcotics again besides there being an apprehension of breach of peace and security of the State.

6. After considering the respective submissions and perusing the record, it transpires that the petitioner after having been convicted in the aforesaid case for having committed offences punishable under Section 15 of NDPS Act read with Section 120-B, 201 of IPC was sentenced to undergo Rigorous Imprisonment for 10 years and fine of ₹1,00,000/- vide judgment dated 15.02.2020. Petitioner had filed appeal CRA-S-523 of 2022 which is admitted and pending in this Court. The petitioner has been in custody in this case for a period of 4 years and 10 days including 2 years and 4 days after conviction and has not yet availed the concession of parole. By way of the present petition petitioner is seeking relief of parole for meeting his family members.

7. It is worth mentioning here that the case for grant of temporary release on parole was duly forwarded and initiated but was rejected by District Magistrate Jalandhar vide order dated 09.08.2023 (Annexure P-1) on the basis of the report provided by the Senior Superintendent of Police Jalandhar (Rural) wherein, it has been mentioned that if, petitioner is granted concession of parole, then there is every possibility of petitioner indulging in

smuggling of narcotics besides there is apprehension of breach of peace and security of the area.

8. It is relevant to mention here that Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, permits temporary release of prisoner on parole on the grounds as mentioned therein. The petitioner has never be released on parole and seeks parole to meet his family members. The concession of parole to a convict is regulated by the statute and the authorities thereunder cannot act arbitrarily, capriciously or without due application of mind. The decision on such application of convict has to be well reasoned and speaking one.

9. In this context, it is worth mentioning here that the Hon'ble Division Bench of this Court in ***Jugraj Singh @ Bhola Vs. State of Punjab and others, 2010 (25) R.C.R. (Criminal) 138*** has held as under:-

“It is also conceded position that the petitioner can be temporarily released on parole for four weeks under Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct Prisoners(Temporary Release) Act, 1962 (hereinafter referred to as `the Act') to enable him to meet his family members. 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. In the instant case, no such strong material or basis has been relied upon by the respondents while rejecting the prayer of the petitioner for releasing him on parole for four weeks to meet his family members.”

A perusal of the above-said judgment would show that it has been observed that a convict can be temporarily released on parole under

Clause (d) of sub-section (1) of Section 3 of the Punjab Good Conduct

Prisoners (Temporary Release) Act, 1962 to enable him to meet his family members and the release of a convict on parole is a wing of reformatory process.”

10. A Division Bench of this court in ***Gursahib Singh Vs. State of Punjab and others***” passed in **CRWP-867-2021**, decided on 31.05.2022 has held as under:-

“The present petition has been filed for release of the petitioner on parole raising challenge to the order dated 15.05.2020 (Annexure P-2) wherein, the Senior Superintendent of Police, Tarn Taran gave an adverse recommendation regarding the release of the petitioner on account of the fact that he is habitual of consuming intoxicants and while on parole, he could cause threat to peace and may indulge in selling intoxicating substances and may be declared as a proclaimed offender. Keeping in view the adverse recommendation, the rejection order dated 19.05.2020 has been passed by the Deputy Commissioner, Tarn Taran (Annexure R-2/T).

The reasoning given in the said order is that in view of the adverse recommendation that the convict is a drug addict and if released on parole, he could harm peace and there is apprehension that he would again be involved in drug trafficking and there are chances of absconding also, the rejection was there.

We are of the considered opinion that the order is de hors the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (in short 'the 1962 Act') and has lost sight of the purpose for which the said Act has been promulgated. A perusal of the custody certificate dated 30.05.2022, which has been filed today by the State and which is taken on record, would go on to show that the petitioner has undergone actual period of 2 years, 11 months and 16 days by now on account of the conviction which has been recorded of 12 years under Section 18 of the Narcotic Drugs and Psychotropic⁵ of 8 Substances Act, 1985 (in short 'the NDPS Act') on 18.01.2020. It is a matter of record that he has also been convicted for a period of 4 years and 6 months in FIR No. 106 under Section 21, 61 and 85 of the NDPS Act and also was involved in FIR No. 22 dated 03.02.2004 under Section 61 of the Punjab Excise Act, 1914. The custody certificate would also

go on to show that he has not been granted the benefit of parole since the date of his conviction. A period of more than 2 years has gone by.

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The ground that there is an apprehension that he would be again involved and that he may abscond are mere imaginations of the authorities as such. It is the duty of the State itself that the convict should not indulge in such activities and preventive measures should be taken and on account of such apprehensions, the benefit of the release cannot be denied. The earlier involvement was of the year 2005 and much water has flown down after that. He is already suffered imprisonment for 4-1/2 years and, therefore, for the same, he cannot be penalized twice by denying him the benefit of parole.

Accordingly, we are of the considered opinion that the reasoning given in the impugned order 15.05.2020 (Annexure P-2) and the subsequent order passed by the Deputy Commissioner 19.05.2020 (Annexure R-2/T) are not justified and do not stand reason. They are accordingly quashed and a writ of mandamus is issued to release the petitioner on parole for a period of 4 weeks. He shall surrender back to the Jail Authorities on the expiry of the said period.

The petition stands disposed off accordingly."

11. On the same aspect is also the judgment of Hon'ble Division Bench of this Court in ***CRWP No. 9165 of 2022, Amarjit Singh @ Kala @ Mama vs. State of Punjab and others*** decided on 23.01.2023; ***CRWP No. 10075 of 2022 decided on 19.01.2023 titled as Shiv Kumar @ Shiva vs. State of U.T. Chandigarh & others.***

12. Considering all these facts and circumstances in the light of the law settled in the aforesaid judgments it is observed that in the present case admittedly the petitioner has been in custody for more than 4 years and has not availed the concession of parole even for once, the case for temporary release on parole has been declined by the competent authority vide impugned order dated 09.08.2023 (Annexure P-1) only on the basis of report

submitted by Senior Superintendent of Police, Jalandhar wherein
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apprehension has been raised that the petitioner if granted concession of bail will indulge in smuggling of narcotics activity besides there is apprehension of breach of peace and security in the area. Apart from the bald apprehension raised by the Senior Superintendent of Police, Jalandhar there is nothing on record on the basis of which the authority came to such conclusion. It would be apt to say that such apprehension raised by the authorities are nothing but mere imagination. In the absence of any plausible ground to form basis for such apprehension of the authority concerned, it would be nothing but a mechanical order passed on the basis of the mere conjectures and surmises the concession of parole is regulated by the statute and the authorities nominated there under are expected to perform duty to achieve the objective of the statute. It is not expected from them to act arbitrarily, capriciously and without due application of mind.

13. Thus, considering all the above facts and circumstances, it is observed that by way of present petition, the petitioner has sought temporary release for a period of 3 weeks for the purpose of meeting his family members and he has been in custody for more than 4 years without taking any concession of parole during the period, therefore, in this backdrop passing of the impugned order by the competent authority vide order dated 09.08.2023 (Annexure P-1) is nothing but an order passed in a mechanical manner without there being any sustainable reasons based purely on surmises and conjectures, order being not sustainable in the eyes of law and is hereby set aside.

14. As a consequent, the petitioner is ordered to be released on parole for a period of 3 weeks from the date of release subject to his

furnishing personal/surety bonds to the satisfaction of the concerned District Magistrate and in addition concerned District Magistrate, may impose such conditions as may be necessary to secure the presence of the petitioner in jail after the parole is over and to ensure that the temporary release is not misused.

15. Petition, accordingly is disposed of.

(SANJIV BERRY)
JUDGE

20.02.2024

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