

CRWP-11659-2023 (O&M)

2024.PHHC.139404-DB



208-a

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRWP-11659-2023 (O&M)
Date of Decision: October 23, 2024

MOHINDER SINGHPetitioner

Versus

STATE OF PUNJAB AND ORS Respondents

2. CRWP-11856-2023 (O&M)

BALBIR SINGHPetitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Bandana Trikha, Advocate
for the petitioner in CRWP-11659-2023 (through VC).

Mr. Mohit Singla, Advocate
For the petitioner in CRWP-11856-2023 (through VC).

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

LISA GILL, J.

1. This order shall dispose of CRWP Nos. 11659 and 11856 of
2023, which are taken up together for hearing and adjudication at request and
with consent of learned counsel for parties as petitioners in both the writ

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petitions are co-convicts in the matter arising out of FIR No. 1 dated 02.08.2018. Petitioners have been convicted for the offences punishable under Sections 302, 326, 324, 323, 34 IPC by learned Additional Sessions Judge, Ferozepur vide judgment dated 21.01.2023 and sentenced to imprisonment for life.

2. Vide order dated 20.09.2023 passed by District Magistrate, Ferozepur, request for parole by petitioner - Mohinder Singh son of Sh. Dara Singh (in CRWP-11659-2023) was rejected and similar request by his real brother petitioner - Balbir Singh son of Dara Singh (in CRWP-11856-2023) was also declined vide separate order. Aggrieved therefrom, present petitions have been filed.

3. Learned counsel for petitioner(s) submit that District Magistrate has arbitrarily rejected the prayer for parole vide impugned orders without taking into account all facts and circumstances of the case and has infact proceeded in violation of settled principles. Petitioners, it is submitted, are entitled to parole in terms of applicable provisions of Punjab Good Conduct of Prisoners (Temporary Release) Act, 1962 and there is no impediment to grant thereof. Both the petitioners have undergone over six to seven years of imprisonment having been in custody since the year 2018. It is, thus, prayed that present petitions be allowed.

4. Petitions have been opposed by learned counsel for State who prays for dismissal thereof.

5. We have heard learned counsel for parties.

6. It is a matter of record that petitioners sought benefit of parole in order to meet their families and do household works. Prayer for parole by

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Mohinder Singh was dismissed by Deputy Commissioner-cum-District Magistrate, Ferozepur on the ground that SSP had not recommended the same and that Panchayat was against his release on parole raising an apprehension that in case he is released he may commit murder again. Therefore, there is apprehension of breach of peace and disruption of public order. Similar order was passed in respect to petitioner – Balbir Singh with an addition that he had earlier been involved in matter under Section 307 IPC in the year 2015 and offence in the present case had been committed.

7. Petitioners have attached panchayatnamas of village panchayat in question, recommending their release on parole whereas in replies filed in the petitions on behalf of State, it is stated, that respective panchayats had opined against release of petitioners on parole. While noting this discrepancy, learned counsel for State had been directed to seek instructions. It was verified that both panchayatnamas had infact been submitted by panchayats in question. The only objection raised for opposing the petitions is that petitioners had been involved in some matter in 2015-16. It is specifically mentioned in the reply filed on behalf of State in CRWP-11856-2023 that after conviction, petitioner – Balbir Singh has never availed the benefit of parole and his conduct is peaceful in jail. Petitioner - Mohinder Singh had been found innocent in the said earlier case whereas petitioner - Balbir Singh was involved in the matter under Section 307 IPC, therefore, there was apprehension of petitioners committing offence, if released. Clearly, such reasoning is opposed to the basic principles underlying the grant of benefit of parole to convict. Though District Magistrate, Ferozepur in the impugned orders has referred to order dated 31.01.2023 passed in CRWP-11856-2023, it

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is apparent that impugned orders have been passed without adherence to the principles as laid down.

8. As per the Statute and as held in a plethora of cases temporary release of a prisoner on parole or furlough can be denied only if such release is likely to endanger security of State or maintenance of public order. Competent authority is under a duty to take a considered decision in this regard after due regard to the factual matrix and the decision has to be based or founded on substantial material.

9. In the case of **Bansi Lal versus State of Punjab and others 2016 (4) RCR (Criminal) 1017**, it has been held by Division Bench of this Court as under:-

“ 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

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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.”

10. In the instant case, learned counsel for State is unable to point out any substantial material for denying the benefit of parole to petitioners/arriving at a conclusion of endangerment of security of State or maintenance of public order.

11. Keeping in view the facts and circumstances as above, impugned orders dated 20.09.2023 are not sustainable. Present cases call for reconsideration of the matter by competent authority in accordance with law and parameters as laid down for grant of parole.

12. Accordingly, both orders dated 20.09.2023 in the petitions are set aside. Both the matters are remitted to the competent authority, who shall reconsider the same and decide them expeditiously and definitely within a

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period of four weeks from receipt of certified copy of this order, by passing a speaking order, in accordance with law.

12. Copy of the order be conveyed to petitioners.

(LISA GILL)
JUDGE

October 23, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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