

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

229

CRWP-12305-2023 (O&M)
Date of Decision:- 19.01.2024

GURPREET SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Ms. Neha Jain, Advocate for the petitioner.

Mr. Harpreet Singh, Additional AG Punjab.

SANJIV BERRY, J. (ORAL)

1. The instant petition has been preferred under Article 226/227 of the Constitution of India read with Section 3(1) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as 'Act') for issuance of appropriate writ in the nature of Certiorari for quashing of impugned order/letter dated 26.10.2023 (Annexure P-1) passed by District Magistrate, Bathinda-respondent No.3, whereby application filed by the petitioner for release on parole was declined.

2. The petitioner has been convicted by learned Judge, Special Court, Bathinda vide judgment dated 23.11.2022 and sentenced to undergo rigorous imprisonment for a period of 10 years with fine of Rs.1 lakh and in default of payment of fine to further undergo rigorous imprisonment for a period of 1 year for offence punishable under Section 21(c) of the NDPS Act. The petitioner has challenged the said judgment of conviction and order

of sentence dated 23.11.2022 by way of Criminal Appeal No.CRA-S-279-2023, which is pending admitted before this Court.

3. Upon notice of motion being issued on 22.12.2023, respondent-State has filed reply dated 19.01.2024 by way of affidavit of Superintendent, Central, Jail Bathinda, which is taken on record. A perusal thereof reveals that the request of the petitioner for release on parole had been declined by the District Magistrate, Bathinda on the basis of report received from the Senior Superintendent of Police, Bathinda stating therein that the petitioner may indulge himself into smuggling of narcotics, due to which the people of the area may have conflict with each other and cause threat to State security and maintenance of public order. There is also an apprehension of the petitioner absconding during parole period.

4. Learned counsel for the petitioner contends that the petitioner is in custody for about 3 years and has not availed parole and had moved the application for parole as he wanted to meet his family members and also to arrange for the marriage of his daughter who is of marriageable age. He submits that the conduct of the petitioner inside jail is good. He submits that parole to the petitioner cannot be refused on the ground that there is danger of him running away. He submits that it is the duty of the Police and District Magistrate to give protection to the public and maintain law and order. He contends that the said apprehension raised by the Senior Superintendent of Police is without any basis as there is no other NDPS Act case registered against the petitioner and where from the said authority came to the conclusion that the petitioner will indulge in such activities is hypothetical.

5. In support of her contentions, learned counsel for the petitioner has referred to judgement *Avdesh Kumar v. State of Punjab and Others (P&H) (DB)*, Law Finder Doc ID# 2257534; *Amarjit Singh @ Kala @ Mama, (P&H) (DB)*, Law Finder Doc Id # 2200956; *Mahammad Shehbaz v. State of Punjab and others (P&H) (DB)*, Law Finder Doc Id # 2012267; *Babbu Singh alias Tidda v. State of Punjab and others (P&H)*, Law finder Doc Id # 2062227; and *Govinda v. Stae of Punjab and others, (P&H)* Law finder Doc Id # 2126549.

6. *Per contra*, learned State counsel while referring to the reply filed by the State has opposed the prayer made by the petitioner. He submits that petitioner has undergone actual sentence of 2 years, 9 months and 9 days and is involved in another case bearing FIR No.202 dated 25.09.2018 registered under Section 379B(2) IPC at Police Station Maur, Bathinda. He further submits that the case of the petitioner was rightly rejected by the District Magistrate, Bathinda on the basis of report of Senior Superintendent of Police, Bathinda, wherein it had been stated that there is apprehension of the petitioner getting indulged in smuggling of narcotics and that petitioner may abscond after coming out on parole.

7. After considering the respective submissions and perusing the record, it transpires that the only reason given by District Magistrate, Bathinda for declining the prayer made by the petitioner is that there is risk of the petitioner of indulging in smuggling and there is apprehension of breach of public law and order. However, as per the custody certificate filed by the State, there is no other case registered against the petitioner under the

NDPS Act, which shows that petitioner is not a habitual offender. The other case pending against the petitioner is registered under Section 379B(2) IPC and the petitioner is on bail therein. These facts have not been controverted by the learned State counsel.

8. In the light of the facts and circumstances referred to the judgments cited by learned counsel for the petitioner it is observed that in ***Mahammad Shehbaz's case (supra)*** it has been held that the release on parole is a reformatory process, provisions of the Act has been enacted as reformatory measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals, therefore, sufficient material should be available and there should be solid reasons for declining temporary release on parole. As such, declining of parole on the report of Senior Superintendent of Police that the release of convict could disturb the law and order in the city and endanger country's security without any solid reasons has been held to be without application of mind and release of the convict had been held.

9. Similarly, in an identical situation arising in ***Avdesh Kumar's case (supra)*** wherein the parole had been declined by the competent authority on the ground that the convict would indulge in sale of contraband besides it would give bad effect to young generation and there was apprehension of breach of peace. It has been held therein that such satisfaction recorded by the authorities is unsustainable based merely on conjectures and surmises and mere apprehension of the convict indulging in sale of contraband or of causing breach of peace would not bring case within

the ambit of Section 6(2) of the Act so as to enable the competent authority to reject application for temporary release on parole. However, in *Amarjit Singh @ Kala @ Mama's case (supra)* it has been held that the concession of parole to a convict is regulated by statute and the authorities there under cannot act arbitrarily, capriciously or without due application of mind and the decision of the competent authority on such application moved by the convict has to be well reasoned and speaking one.

10. The facts and circumstances referred to in *Babbu Singh alias Tidda's case (supra)* and *Govinda's case (supra)* are identical to the facts and circumstances of the present case wherein also the parole had been declined by the competent authority only due to the reason that the accused may contact drug smugglers and can sell intoxicants substances and in this cases it has been held that any specific input from any quarter to suggest that the petitioner can indulge in such activities, the rejection order cannot be passed by the competent authority merely on the basis of vague apprehension based on conjectures and surmises.

11. It is relevant to mention that Section 3(1)(aa) 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 wants to meet his family members. He has never been released on parole earlier. There is nothing on record that the behaviour of the petitioner was not found good during his stay in jail. 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 and such decision on basis of mere apprehension without any specific input, being just mechanical cannot sustain.

12. Therefore, taking into consideration all the facts and circumstances and finding the impugned order having been passed in a routine mechanical manner and without any sustainable reasons, the impugned order/letter dated 26.10.2023 (Annexure P-1) is hereby set aside. The petitioner is ordered to be released on parole for a period of six weeks subject to his furnishing personal/surety bonds alongwith two surety bonds to the satisfaction of the concerned District Magistrate. The District Magistrate concerned, 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.

13. Disposed of accordingly.

(SANJIV BERRY)
JUDGE

19.01.2024
S.Sharma(syr)/Gyan

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