

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRWP-2008-2024 (O&M)
Date of Decision: 10.03.2025

BALKAR SINGH @ KAKA

...Petitioner

V/S

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

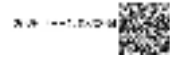
Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Petitioner has filed this petition under Article 226 of Constitution of India read with the Punjab Good Conduct Prisoners (Temporary Release) Act 1962 (hereinafter to be referred as 'the Act of 1962') for issuance of a writ in the nature of certiorari for quashing the impugned order dated 15.02.2024 (Annexure P-1) passed by respondent No. 2, vide which the case of the petitioner for grant of parole has been declined and further for issuance of a writ in the nature of mandamus directing the respondents to release the petitioner on parole for eight weeks.

2. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 15.02.2024 (Annexure P-1) has been passed in a mechanical manner and there is no legislative mandate to reject the case of a convict for temporary release on the apprehension that in case the petitioner is released, he can indulge in smuggling of intoxicating substances. He further submits that the appellant was convicted for rigorous imprisonment for 10 years under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and he has undergone actual custody of more than 06 years and 10 months. He further relies upon the judgment passed by the Division Bench of



this Court in CRWP-5395-2023 decided on 06.05.2024 titled as ***Kulwinder Singh @ Taina Vs. State of Punjab and Others*** and ***Jassa Singh @ Jassa Vs. State of Punjab and Others*** 2016(5) RCR (Criminal) 522 and submits that Division Bench of this Court has already considered the statutory provisions contained in the Act of 1962 and has concluded that involvement of the convict in other cases cannot be a sole ground for denying him the concession of temporary release. Learned counsel further submits that case of the petitioner satisfies the ground contained in Section 03 of the Act of 1962 and marriage of his daughter is fixed for 25.03.2025. Relevant paragraph of judgment ***Kulwinder Singh @ Taina(supra)*** is reproduced hereinbelow:

*“10. Objectives of parole are twofold i.e. rehabilitation of offender and protection of society. The main purpose of parole is that prisoner can maintain continuity together with his family, friends and community and at the same time to save prisoner from harmful effects of continuous prisoner life. Parole enables a prisoner to develop a feeling of self confidence that there is a life beyond prison. It helps prisoner to develop a sense of hope and active interest in his life with a view to rehabilitate the prisoner. Competent authority can always impose sufficient and necessary conditions while granting parole. Gainful reference at this stage can be made to the judgment of Coordinate Bench in ***"Bansi Lal versus State of Punjab & Others"***, 2016(4) R.C.R. (Criminal) 1017, where it was observed as under :-*

"11. During incarceration of a prisoner in jail after his conviction he is entitled for temporary release on parole which though is a concession and not a right. However, in order to reform a prisoner a periodic temporary release on parole for short duration is necessary. This is a welfare measure in the interest of a prisoner

xx xx xx xx

15. 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 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."

11. *A Division Bench of this Court in the case of Manga @ Manga Singh Versus State of Punjab and others, 2020(4) R.C.R. (Criminal) 133 specifically held that merely because petitioner was involved in four other cases cannot be a valid ground by itself to deny release on parole.*

12. *As per impugned order dated 10.04.2023 based on the report of Senior Superintendent of Police, Ferozepur, it is observed that in case petitioner is released on temporary parole, he can indulge in smuggling of narcotics and he may also abscond during parole. On this basis, prayer for parole was rejected by District Magistrate, Ferozepur by passing impugned order dated 10.04.2023 (Annexure P-2). Such mere apprehension is not a valid ground for rejection of application filed by petitioner seeking parole. Affidavit filed by Deputy Superintendent of Police, Zira and impugned order*

dated 10.04.2023 Annexure P-2 do not come to the aid of the State justifying denial of parole to petitioner. Consideration of the question whether release of petitioner on parole is likely to endanger security of State or maintenance of public order has clearly not been carried out by the competent authority. Cogent material to indicate the same rather than mere registration of various cases has to be available.”

3. Considering the peculiar facts and circumstances of the case and the judgments rendered by Division Benches of this Court in ***Kulwinder Singh @ Taina(supra)*** and ***Jassa Singh @ Jassa(supra)*** the impugned order dated 15.02.2024 (Annexure P-1) passed by District Magistrate, Patiala is hereby set aside, being unsustainable.
4. Further, the District Magistrate, Patiala is directed to re-consider the application filed by the petitioner seeking grant of parole in the light of aforesaid provisions of the Act of 1962, within a period of one week from the date of receipt of certified copy of this order.
5. Needless to say that in case, the authorities deviate from the statutory provisions and do not comply with the order passed by this Court, the petitioner would be at liberty to invoke the provisions contained under Article 21 of Constitution of India seeking contempt of the order passed by this Court.
6. A copy of this order be given to learned State counsel for strict compliance.

(HARPREET SINGH BRAR)
JUDGE

10.03.2025
Ajay Goswami

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