

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.4593 of 2020
Reserved on : 14.08.2020
Pronounced on : 26.08.2020

Manga @ Manga Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HONBLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Prateek Pandit, Advocate for the petitioner

Mr. Hitten Nehra, Addl. AG, Punjab.

G.S. Sandhawalia , J.

In the present original writ petition filed under Articles 226/227 of the Constitution of India, the petitioner challenges the order dated 11.03.2020 (Annexure P-5) passed by the Deputy Commissioner cum District Magistrate, Kapurthala, whereby his case for grant of parole for a period of six weeks has been rejected under the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Resultantly, the relief for grant of parole for a period of six weeks is prayed for.

2. The reasoning as such which the District Magistrate was that there were other cases registered against the petitioner, though he had been sentenced to 10 years imprisonment in FIR No.169 dated 15.10.2010 under Sections 50/61/85 of NDPS Act lodged at Police Station Sultanpur Lodhi, District Kapurthala, on account of the fact that there was recovery of 70 Kgs of poppy husk effected from him. Resultantly, in view the fact that there were 4 more cases of

similar nature against him under the NDPS Act and the fact that the petitioner

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had remained proclaimed offender for long, a finding was recorded that he would do the business of sale of intoxicants, which has a bad impact on society and could be harm to the people of the State. Resultantly, while agreeing with the reports sent by Senior Superintendent of Police, Kapurthala-respondent No.3 and while exercising the powers under Section 3 (4), the parole case was rejected.

3. Counsel for the petitioner has, accordingly, argued that the rejection is on the grounds, which is alien to the provisions of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963. The same provides that the parole can be declined on the ground that the prisoner's presence being dangerous to the security of the State or prejudicial to the maintenance of the public order and not that on account of the fact that number of cases were registered against the prisoner and that he may deal in intoxicants again, which were irrelevant consideration.

4. The brief background of the case is that the petitioner is undergoing imprisonment after having been convicted in FIR No.169 dated 15.10.2010 under Section 15 of the NDPS Act registered at Police Station Sultanpur Lodhi, District Kapurthala, for a period of 10 years by the Special Court,

Kapurthala. His appeal **CRA-S-4115-SB-2016** is pending before this Court. It is his case that he has also been convicted in FIR No.129 dated 27.06.2014 under Section 15 of the NDPS Act registered at Police Station Sultanpur Lodhi, District Kapurthala and his appeal **CRA-S-4222-SB-2016** is also pending before this Court. He had

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applied for parole, vide application dated 20.02.2017 (Annexure P-1) to the Jail Superintendent, Central Jail, Kapurthala-respondent No.4, to meet his family and wife and children and get treatment done of his wife as she is suffering from liver ailment.

5. The said application was processed by seeking a report from the Senior Superintendent of Police, Kapurthala and there was no objection received by the villagers of village Latianwal, regarding the release on parole of the petitioner. A reminder was also sent to the respondent No.2 by respondent No.4 on 01.09.2017 (Annexure P-3). Resultantly, he filed **CWP No.1118 of 2020**, whereby directions were issued on 03.02.2020 (Annexure P-4) to decide the case for grant of parole. The same has been rejected as noticed above.
6. It has been averred that the petitioner has maintained good conduct during his period of incarceration and there is no impediment for grant of parole and reliance was placed upon

the Division Bench judgment dated 26.04.2016 passed in **CRWP No.1322 of 2015 'Daler Singh Vs. State of Punjab'** that merely if there is apprehension of the petitioner absconding is no basis for rejecting the case, even if he had indulging in smuggling activities earlier. It was held that the ground that he is likely to abscond if released on parole, which was also a case under the NDPS Act, wherein sentence was for 12 years was without basis.

7. Accordingly, it is pleaded that in FIR No.47 dated 23.02.2013 under Section 15 of the NDPS Act registered at Police Station Sultanpur Lodhi, District Kapurthala, whereby the recovery was of 60

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Kgs poppy husk, the sentence has been suspended by this Court on 12.11.2018 (Annexure P-6) in **CRA-S-2371-SB-2016**. Similarly, in FIR No.81 dated 14.04.2013 lodged under Sections 392, 382, 384, 379, 212, 216 IPC and Sections 15, 18, 21, 22, 61, 85 of the NDPS Act alongwith Sections 25, 54, and 59 of the Arms Act lodged at Police Station Sultanpur Lodhi, Kapurthala, the petitioner was stated to be on bail, as per Annexure P-7 and subsequently the petitioner in the said case had been acquitted. Photocopy of the said judgment dated 17.02.2020 passed by the Special Court, Kapurthala acquitting the petitioner has been placed on record. It is further averred that in FIR No.17 dated 25.02.2014 under

Section 21 of the NDPS Act lodged at Police Station Fattu DHINGA, District Kapurthala, he had been convicted on 02.09.2015 and sentenced to the period already undergone.

8. The State chose not to file reply and sought to defend the order on merits, on the ground that since there were 4 more cases against the petitioner, he would again resort to the business of sale of intoxicants.

9. It is not disputed that the petitioner's case has been favourably recommended by respondent No.4, which would be clear from Annexure P-1, whereby he recommended six weeks parole for the prisoner way-back on 17.02.2017. The impugned order as noticed has only been passed after 3 years only on account of the fact that directions had been issued by this Court to decide the case of the petitioner for grant of parole, as expeditiously as possible, in accordance with law. Thus, the petitioner has undergone further period of 3 years after the said

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recommendation made.

10. The procedure for temporary release under Rule 3, which pertaining to parole is provided under the 1963 Rules, wherein an application is to be made to the Superintendent of Jail, which is to be forwarded to the District Magistrate after consulting the Senior Superintendent of Police of the District. The District Magistrate has to verify the grounds and give its opinion for the temporary release on parole or furlough which

is to be based on the grounds whether the prisoner's presence being dangerous to the security of the State or prejudicial to the maintenance of public order. Further proviso provides that the prisoner has to maintain good conduct after his conviction atleast for 4 months in jail. Rule 4 further provides that if the prisoner commits any offence during the period of his temporary release, a report be sent to the Superintendent of Jail, which shall be forwarded to the Inspector

General, who may thereafter cancel the release order.

Rule 3 (1 & 2) reads as under:-

“3. Procedure for temporary release. [Sections 3, 4 10 (1), 10 (2) (b), 10 (2) (d) and 10 (2) (e)].-

(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who, after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the

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Inspector-General. The Inspector General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence

being dangerous to the Security of State or prejudicial to the maintenance of public order.

Provided that no such application shall be processed by the Superintendent of Jail, unless the prisoners had maintained good conduct after his conviction atleast for four months in jail.”

Rule 4 reads as under:-

“4. Committing of any offence during temporary release.

[Section 10]-

(1) If the prisoner commits any offence during the period of his temporary release, the Officer-in-charge of the Police Station shall forthwith, and in any case not later than twenty-four hours of his coming to know of the commission of the offence, send a report thereof to the Superintendent of Jail, and to the Superintendent of Police of the District

(2) On receipt of a report under sub-rule (1), the Superintendent of Jail shall forthwith send the same to the Inspector-General for being forwarded to the Releasing Authority, who may thereafter cancel the release warrant.”

11. Thus, sufficient powers as such are vested with the authority to enforce that the prisoner who commits any offence during his temporary release has to suffer the necessary consequences. It is apparent that the petitioner's case as such does not fall under the two exclusions, whereby there is danger to the security of the State or is prejudicial to the maintenance of public order, which has also not been recorded by

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respondent No.2.

12. It is the case of the petitioner that he is in custody since the date of his arrest in the year 2014 and, therefore has been

behind bars since the last six years, as per the application given and the recommendation of the respondent No.4. His possible date of release is 08.06.2026 and, thus, counsel has submitted that the petitioner is entitled for the benefit of parole and the order as such is not sustainable.

13. In support of the above relief prayed for, reliance can be placed upon the Division Bench judgment passed in '**Ram Chander Vs. State of Punjab**', 2017 (3) RCR (Criminal) 340, wherein the parole had been rejected of a prisoner on the ground that the District Magistrate had recommended that there is likelihood of committing a crime if allowed parole. It was, accordingly, held that such likelihood of committing a crime while on parole would not sufficient grounds to decline temporary release and it would not as such fall within the exceptions of the danger to the security of the State and maintenance of the public order. Reliance was placed upon an earlier judgment of this Court passed in **CRM-M34013-2009 'Varun @ Gullu Vs. State of Haryana and others'** decided on 26.04.2010', wherein it had been held that the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind.

14. The statutory power to release a prisoner on parole or furlough is to be exercised objectively, keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or

furlough. The said observations in **Ram Chander (supra)** are directly applicable to the facts of the present case and read as under:-

“11. Therefore, release of a prisoner on parole can be declined in case his release on parole is likely to endanger the security of the State or the maintenance of public order. The recommendation made by the District Magistrate, Unnao (respondent No. 3) for not releasing the petitioner on parole is merely that the petitioner is undergoing life imprisonment in a case like murder, so there is a probability that he may commit a crime on release on parole. The likelihood of committing a crime while on parole would not be a sufficient ground to decline temporary release on parole as mere likelihood of committing crime is not to be taken as apprehension of a threat to the security of the State or the maintenance of public order. As 4 of 7 already noticed, parole can be declined in case the competent authority is satisfied that his release is likely to endanger the security of the State and maintenance of public order. No such eventuality has been mentioned in the present case.”

15. Similar is the case in '**Sagar Kumar Vs. State of Punjab**', **2017 (4) RCR (Criminal) 116**, wherein the case of parole had been rejected, which was a case of conviction under Section 376 (D) IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POSCO). The objection had been raised by the SSP that there is apprehension of breach of peace and the girl who had been violated was still unmarried and living in the same village. It was noticed by the Division Bench that a compromise was entered into before even the conviction was recorded and resultantly it was held that the

administrative authorities should take all relevant facts into consideration by excluding irrelevant facts and the decision should be neither perverse nor irrational. Resultantly, directions were issued for consideration as the factum of compromise had not been taken into consideration.

16. Reliance can also be placed upon the Division Bench judgment passed in '**Bansi Lal Vs. State of Punjab**', 2016 (4) RCR (Criminal) 1017, wherein similar issue arose and the report received was that the convict may deal in intoxicants and jump parole, since the conviction had also been for 12 years under the NPDS Act. It was, accordingly, held that the word 'Security of the State' and maintenance of 'public order' is intended to prevent grave public disorder, which is not the same as maintenance of law and order and a distinction had to be made. Every breach of peace does not lead to public disorder and an act which disturbs the even tempo of life of the public at large affects the maintenance of public order. Relevant paragraph of the said judgment reads as under:-

“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

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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.”

17. In the case of '**Jassa Singh @ Jassa Vs. State of Punjab**' **2016 (5) RCR (Criminal) 522**, the Division Bench set aside

the order of rejection and directed reconsideration, since the conviction had been under the NDPS Act for 12 years. The impugned order of the District

Magistrate in that case was on the basis of the reasoning that such

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prisoner when released on parole would generally involve in causing danger to the security of the country and would involve himself in criminal activities. Thus, keeping in view the settled position of law, which has also been discussed above, the said order was set aside.

18. For the reasons given above, this Court is of the opinion that merely because the petitioner is involved in four other cases, would not be a valid ground to deny him release on parole. It cannot be disputed that the purpose of release is to make sure that the prisoner as such meets with his family members and the general public. It is a reformative process, whereby a convict is reintroduced to normal life and, thus, by declining the said benefit on an application, which was duly recommended by the Superintendent of Jail, the reasoning given as discussed above, would come within the vice of irrationality and

perversity, in spite of the settled position of law.

19. Resultantly, the impugned order dated 11.03.2020 (Annexure P-5) passed by the Deputy Commissioner-cum-District Magistrate, Kapurthala is quashed. The matter shall be reconsidered by the

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said District Magistrate within a period of 4 weeks from the receipt of the certified copy of this order, keeping in mind the observations made above and pass necessary orders.

20. The petition stands allowed in the above terms.

(G.S. SANDHAWALIA)
JUDGE

26.08.2020

Naveen

Whether speaking/reasoned: Yes Whether Reportable: Yes