



2023:PHHC:081458

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-2664-2023

Date of Decision : 02.06.2023

Avdesh Kumar ...Petitioner

versus

State of Punjab and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia
Hon'ble Mr. Justice Lalit Batra

Present : Ms. Bhupinder Pal Kaur Brar, Advocate
for the petitioner.

Mr. Gurpreet Singh Sandhu, DAG, Punjab.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Article 226 of the Constitution of India is for the setting aside of order Annexure P/2 dated 22.11.2022, passed by the District Magistrate, Sri Muktsar Sahib, i.e. respondent No.3 rejecting u/s 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act'), the application of the petitioner for release on eight weeks parole on the ground that if the petitioner is released on parole he can indulge in activities of selling drugs which can give bad affect to the young generation besides on account of apprehension of breach of peace.

2. A perusal of the paperbook reveals that the petitioner was convicted in case FIR No.3 dated 04.01.2019, U/s 22, NDPS Act, Police Station City Sri Muktsar Sahib and was sentenced to undergo rigorous imprisonment for a period of fourteen years and to pay fine of Rs.1,50,000/-, vide judgment dated 19.08.2021, passed by the learned

Sessions Judge, Sri Muktsar Sahib and at present the petitioner is confined in District Jail, Sri Muktsar Sahib.

3. On 21.12.2021, the petitioner applied for eight weeks parole along with *panchayatnama* in terms of Section 3 (1) (d) of the Act, to meet his family members and to look after his household affairs. Respondent No.4 i.e. Superintendent, District Jail, Sri Muktsar Sahib, recommended the release of the petitioner on eight weeks parole and forwarded the same on 21.12.2021 to the District Magistrate, Sri Muktsar Sahib i.e. respondent No.3 as well as the Director General of Police, Jail Department, Punjab i.e. respondent No.2 but as noted above, the application for release on parole was rejected.

4. Pursuant to notice on the petition, reply has been filed by way of affidavit of the DSP, Sub Division, Sri Muktsar Sahib on behalf of respondent No.2 reiterating the reasons as are given in the impugned order for rejecting the claim of the petitioner for release on eight weeks parole.

5. Learned Counsel for the petitioner while contending that the impugned order is legally unsustainable relies upon the decision of Hon'ble Coordinate Bench of this Court in Bansi Lal vs. State of Punjab and others, Law Finder Doc ID #735958, Jatinder Singh vs. State of Punjab and others, CRWP-5988-2021, decided on 09.08.2021, Paramjit Kaur vs. State of Punjab and others, CRWP-11138-2021, decided on 27.01.2022 as well as the decision of Hon'ble the Supreme Court in Banka Sneha Sheela vs. State of Telangana and others, in Criminal Appeal No.733 of 2021, arising out of SLP (Criminal) No.4729 of 2021, decided on 02.08.2021.

6. Learned Counsel for the petitioner contends that a

convicted prisoner is entitled to temporary release from custody on the grounds as enumerated in Section 3 of the Punjab Good Conduct, Prisoners Temporary Release Act, 1962, including on the ground u/s 3 (1) (d) which provides for temporary release of a prisoner for any sufficient cause other than as stipulated in clause 3 (1) (a) to (c) and the temporary release can be denied only if the State Government or an Officer authorized by it on the report of the District Magistrate, is satisfied that the release of the prisoner is likely to (i) endanger the security of the State or (ii) the maintenance of public order and not on any other ground. Sections 3 and 6 of the Act *ibid* are reproduced as under:-

3. Temporary release of prisoners on certain grounds. (1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that:-

(a) a member of the prisoner's family has died; or

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or]

(b) the marriage of the prisoner's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation 2[on his land or any other land cultivated by him] and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant and is likely to deliver a child; or"]

(d) it is desirable so to do for any other sufficient cause.

[Explanation. The expression "sufficient cause" includes]’–

(1) serious damage to life property of the member of the family caused by any natural calamity; or

(2) critical condition of any member of the family on account of accident; or

(3) delivery of child by the wife of the prisoner.]

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the ground specified in clause

(a) of sub-section (1), fifteen days;

(b) where the prisoner is to be released on the ground specified in clause (aa) or clause(b) or clause (c) or clause (d) of sub-section (1), '[eight weeks); and

(c) where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days prior to the date of delivery of child and sixty days after the date of delivery of child.]

[(2-A) The total period of temporary release of the prisoner, excluding therelease availed of:-

(i) on the death of a family member of the prisoner; or

(ii) by a female prisoner on account of delivery of child, as the case may beshall not exceed sixteen weeks, during a calendar year and shall be availed of on quarterly basis;

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is on temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so]:

"[Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases Act, 1897, the State Government may, by a special notification published in the Official Gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis."]

(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner.

(4) The State Government may by notification authorize any officer to exercise its power under this Section in respect of all or any of the grounds specified therein.

Section 6:

6. Cases where consultation with District Magistrate not necessary or where prisoners are not to be released.- Notwithstanding anything contained in sections 3 and 4 :-

(1) it shall not be necessary to consult the District Magistrate where the State Government is satisfied that the prisoner maintained good conduct during the period of his earlier release under any of the aforesaid sections; and

(2) no prisoner shall be entitled to be released under this Act, if on the report of the District Magistrate, where consultation with him is necessary, the State Government or an officer authorised by it in this behalf is satisfied that his

release is likely to endanger the security of the State or maintenance of public order.

7. Learned DAG, Punjab, on the other hand, contended that the claim for temporary release on parole had been rejected by the District Magistrate, Sri Muktsar Sahib vide order Annexure P/2 on the basis of police verification report by the Senior Superintendent of Police, Sri Muktsar Sahib therefore the rejection was immune from challenge.

8. We have heard learned counsel for the parties.

9. Admittedly, the Act provides for temporary release of a convict for good conduct on certain conditions as are envisaged therein. The only ground for rejecting the claim of the petitioner herein is that if he is released on parole he can indulge in activities of selling drugs which can give bad effect to the young generation besides there is apprehension of breach of peace. No doubt a convict does not have an unfettered right to be released on parole and the same can only be on the grounds and subject to fulfillment of conditions mentioned in the Act *ibid*. As per Section 6 (2) of the Act, a convict is not entitled to be released on parole, if on the report of the District Magistrate, where consultation with him is necessary, the State government or an Officer authorized by it in this behalf is satisfied that the release of the convict is likely to endanger the security of the State or maintenance of public order.

10. The petitioner had sought temporary release in terms of Section 3 (1) (d) to meet his family members as also to look after his household affairs. It is not disputed by the learned Deputy Advocate General that the said cause falls within the ambit of Section 3 (1) (d) of the Act. However, the opposition to the claim is only on the ground as noticed in the impugned order and as has been referred to above.

However, claim of the petitioner for temporary release could have been rejected on either of the two grounds enumerated u/s 6 (2) of the Act namely on satisfaction recorded by the competent authority that release of the convict was likely to endanger the security of the State or maintenance of public order.

11. In Bansi Lal's case (supra), the release of the petitioner therein on parole was rejected by the competent authority on the ground that the petitioner therein had been convicted under the NDPS Act and if released on parole he may deal in narcotics and jump parole. The Coordinate Bench while considering the validity of the impugned order held that temporary release of a convict was liable to be declined only if his release was likely to endanger the security of the State or maintenance of public order and that the District Magistrate concerned in his report had merely mentioned that the case of the petitioner was considered in the meeting of the Collector which unanimously did not recommend release besides the Superintendent, Jail concerned in his report had intimated that the convict may deal with narcotics and may jump parole. The Coordinate Bench held that the question as to whether the release of the petitioner on parole was likely to endanger the security of the State or maintenance of public order had not been shown to have been considered in the decision making process which was required in terms of Section 6 (2) of the Act as also rule 3 (2) of the Rules on the basis of which temporary release on parole could be declined.

12. The Coordinate Bench further held that an act which poses a threat to the State was to be considered as a threat affecting the security of the State but that 'Public order', was synonymous with public safety and it was something more than mere law and order and every breach of

peace did not lead to public disorder. The Coordinate Bench held that maintenance of public order was intended to prevent grave public disorder, which was not the same as maintenance of law and order and an act which did not affect the public at large or had no impact on it, was not to be taken as an act affecting maintenance of public order. Relevant extract of the decision in Bansi Lal's case (supra) is reproduced 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 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.”

13. In the aforementioned background, the Coordinate Bench allowed the writ petition, set aside the impugned order as well as the report and directed the competent authority to reconsider the matter and pass appropriate orders, in accordance with law, after sending fresh recommendation.

14. Likewise, the Coordinate Bench in Jatinder Singh’s case (supra) wherein the petitioner therein had been declined parole on the ground that while on parole he could do business of selling drugs and there was apprehension regarding disturbance of law and order and local police had objection to the same, set aside the impugned order on the ground that the impugned order had been passed in a routine and mechanical fashion only by reciting that if such concession was granted, there would be apprehension regarding disturbance of law and order. However, no foundation/material had been adverted to in the reply or by learned State Counsel during the course of arguments to justify such apprehension. The impugned order was set aside and the petitioner therein was held entitled to parole for eight weeks and the competent

authority was directed to pass necessary orders for temporary release of the petitioner therein subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behavior during the period of parole and also to surrender in Jail after expiry of the period of parole.

15. To the same effect was the decision in Paramjit Kaur's case (supra), wherein the Coordinate Bench by placing reliance on the decision of Hon'ble the Supreme Court in Banka Sneha Sheela's case (supra) held that mere contravention of law though may affect 'law and order' but the could not be termed as public disorder and the act in question must penetrate the community in a manner as would have a severe impact on the community or public at large before it could be termed as a public disorder.

16. Admittedly, in the case in hand, the claim of the petitioner had been rejected on the ground that in case he is released on parole, he would indulge in sale of contraband besides it would give bad effect to the young generation and there was apprehension of breach of peace. The impugned order does not refer to any material on the basis of which said satisfaction has been recorded and as is based merely on conjectures and surmises. Such a consideration is unsustainable and can be routinely pressed into action for defeating the statutory objective to temporarily release a convict in terms of the provisions of the Act. Mere apprehension of the petitioner indulging in sale of contraband or of causing breach of peace would not bring the case within the ambit of Section 6(2) of the Act so as to enable the competent authority to reject the application for temporary release on parole.

17. Accordingly, in view of the fact that the rejection of the

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claim of the petitioner for temporary release does not fall within the ambit of either of the twin grounds stipulated in Section 6 (2) of the Act besides is based on mere conjectures and surmises without there being any material to arrive on said satisfaction, we are of the considered view that the impugned order is legally unsustainable and is liable to be set aside and the petitioner held entitled to concession of eight weeks parole.

18. Accordingly, the instant petition is allowed, impugned order set aside and the competent authority directed to pass necessary orders within two weeks for temporary release of the petitioner on parole for eight weeks subject to his furnishing necessary surety to the satisfaction of the competent authority and undertaking to maintain peace and good behavior during the period of parole and also to surrender in Jail after expiry of such period besides complying with such other conditions as may be stipulated in the order releasing the petitioner on parole.

(B.S. Walia)
Judge

(Lalit Batra)
Judge

02.06.2023

rajesh

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