
(1999) 05 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11139-M of 1999

Manjinder Singh

APPELLANT

Vs

State of Punjab through Inspector General of Prison

RESPONDENT

Date of Decision : 02-05-1999

Acts Referred:

Citation : (1999) 4 AICLR 145 : (1999) 3 RCR(Criminal) 266

Hon'ble Judges : M.L.Singhal, J

Advocate : I.P.S. Sidhu, S.S. Rana, Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. This is CrI. Misc. No. 11139M of 1993 filed by Manjinder Singh under Section 482 Cr.P.C. read with Article 226/227 of the Constitution of India whereby he has prayed for the grant of six weeks parole to him for agricultural purposes under the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (the Act of 1962).

2. Learned counsel for the petitioner submitted that the grant of parole to him under the Act of 1962 is not barred notwithstanding that he has been convicted and sentenced to undergo RI for 10 years and to pay fine of Rs. 1 lac under section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act).

3. Learned counsel for the petitioner submitted that the Act of 1962 is a beneficent legislation aimed at ameliorating the lot of the convicts who may be given some relief rather sojourn from jail so that they are able to socialise with their family, relations and friends and do not feel cut off and dismembered from the society and further they may be able to attend to their ordinary avocation. Learned Counsel for the petitioner submitted that to get rid of the criminal tendency in a criminal, one of the ways is to allow him to come out of the four walls of the jail and to socialise with the members of his family and to perform social obligations so that this feeling does not land in his mind that he stands

condemned forever. Criminal is not to be looked down upon. He is to be treated as a social animal. Learned counsel for the petitioner submitted that if a convict is allowed parole for a few days, that will draw upon him tranquillity, peace and sense of feeling that he is part of the society and society has not forgotten him. Learned counsel for the petitioner submitted that these are the avowed purposes to achieve which the Act of 1962 has been enacted.

4. In my opinion, the submissions made by the learned Counsel for the petitioner do find support in the legislative object of the Act of 1962. If petitioner is allowed parole for a few days, that would provide succour to him and his family and further that would enable him to break the continuity of detention which brings about change in one's social behaviour. Learned Counsel for the petitioner submitted that if this was the legislative object behind the enactment of the Act of 1962, section 32A of the NDPS Act cannot bar the grant of parole to the convicts of any offence under the NDPS Act. Section 32A of the NDPS Act reads as follows :

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted."

5. Learned Assistant Advocate General for the State of Punjab, on the other hand, submitted that to a convict convicted of any offence under the NDPS Act, parole/furlough cannot be allowed. In support of this submission, he drew my attention to Hassan Ismail Dalvi v. State of Maharashtra, 1999(1) RCR(Criminal) 387 . For arriving at correct decision of the issue involved, the court has to decide whether the grant of parole shall tantamount to suspending the sentence. In my opinion, grant of parole does not tantamount to suspension of sentence because a parolee is not a free bird. A parolee remains subject to the conditions of the bond which he executes when he is released on parole. It was held in Maru Ram v. State of Haryana, (sic) 1980 SC 2147 that "the expressions "prison" and "imprisonment" must receive a wider connotation and include any place notified as such for detention purposes. `Stone walls and iron bars do not a prison make"; nor are `stone walls and iron bars" a sine qua non to make a jail. Open jails are capital instances. Any life under the control of the State, whether within the highwalled world or not, may be a prison if the law regards it as such. House detentions, for example. Palaces, where Gandhiji was detained, were prisons. Restraint at freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law, and, likewise, parole, where the parolee is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment."

6. It is thus clear that a parolee is not a free bird. He is put to certain conditions at the time when he executes bond when he is released on parole. Section 32A of the NDPS Act bars the suspension of sentence. It has nothing to do with the grant of parole. Grant of parole, furlough, etc., are granted under its own

legislation by each State. When sentence is suspended that means the execution of the sentence will remain in abeyance till the disposal of appeal. Hearing of appeal may take one, two or three years or more. Till the hearing of appeal takes place, the sentence remains suspended. If the sentence is suspended, the convict gets greater relief by the suspension of sentence whereas he gets a far smaller relief if he is allowed parole, furlough, etc. Parole, furlough etc. are thus inherently different from the suspension of sentence phenomenon.

7. It, therefore, emerges that the petitioner can ask for parole. Now the question arises whether he owns agricultural land and can be allowed agricultural parole for six weeks. Vide order Annexure P2, Inspector General of Prisons, Punjab refused him parole in view of the provisions of section 32A of the NDPS Act. On facts, there is jamabandi Annexures P1 in which he is shown to be in self cultivator of 72 kanal of agricultural land in village Sohian. Petitioner's prayer for agricultural parole is thus eminently justified. Petitioner is allowed six weeks agricultural parole. He will be released on parole on furnishing necessary bonds before the District Magistrate.

Allowed.