

Before A. P. Chowdhri, J.

JOGINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Writ Petition No. 698 of 1988

September 14, 1988.

Constitution of India, 1950—Art. 19(2)—Punjab Good Conduct Prisoners (Temporary Release) Act (XI of 1962)—Ss. 3, 6—Temporary release of prisoners for Agricultural purposes—Locus standi of complainant to join the proceedings—Expression “security of State” and “Public Order” distinguishable from the concept of law and order—Mere apprehension—Whether on an opposition from complainant camp—The prisoner can be denied temporary release.

Whether the complainant has a *locus standi* to join these proceedings and of being heard. The petitioner has arrayed the State of Punjab and the District Magistrate, Amritsar as two respondents in the petition. In other words, the complainant has not been impleaded as a party. The question of release on parole is between the petitioner and the State. The complainant does not come into the picture. It has been repeatedly held that such prayers for temporary release are in the nature of things always opposed by the complainant party on account of being the victim of crime. The consistent view of this Court, has been that such opposition furnished no ground for refusing the prayer for temporary release, the complainant cannot be heard on the question whether the order passed by the State Government refusing the prayer for temporary release should be set aside. (Para 4)

Held, that the expression “Security of State” and “Public order” occur in Article 19(2) of the Constitution. These expressions have been the subject matter of Judicial consideration and they have acquired a precise meaning. Thus, security of the State is endangered by crimes of violence, intended to overthrow the Government, waging of war and rebellion against the government, external aggression or war, but not minor breaches of public peace or tranquillity, such as unlawful assembly, riot, affray, rash driving, promoting enmity between classes and the like. The concept of ‘public order’ must be distinguished from the popular concept of ‘law and order’ and of ‘security of the State’. An activity which may be prejudicial to public order may not necessarily endanger security of the State. The twin grounds of endangering security of State and public order may or may not be exhaustive of the grounds for refusing temporary release, but these grounds go a long way to suggest that grounds of refusal must be these and like grounds. (Para 7)

Petition Under Articles 226/227 of the Constitution of India praying that the entire records concerning the detenu's case be summoned and after the perusal of the same the detenu be granted:

- (i) *A writ in the nature of habeas corpus holding that the detenu is entitled to be released on parole for the period of six weeks in order to carry out the agricultural operations on his own land;*
- (ii) *A direction be issued to the respondents to release the detenu forthwith and the impugned action of the authorities concerned be quashed whereby the case of the detenu has been rejected as the impugned action hits Articles 14, 19 and 21 of the Constitution of India.*
- (iii) *Any other appropriate Writ Order or Direction which this Hon'ble High Court may deem fit and proper in the circumstances of the present case be issued in favour of the detenu convict;*
- (iv) *Filing of an affidavit and that of the certified copies of the annexures and the impugned action be dispensed with;*
- (v) *Detenu be awarded journey expenses Under Section 10(1)(f) of the said Act as the detenu is a poor man;*

J. S. Bhatti, Advocate, for the Petitioner.

Shri D. S. Keer, Advocate, for the Respondent.

Manjeet Singh, Advocate, for the Complainant.

ORDER

A. P. Chowdhri, J.—

Joginder Singh, petitioner, is undergoing life imprisonment following conviction under section 302, Indian Penal Code. He has already served 3 years, 7 months and 12 days of the actual sentence. He has earned 1 year 6 months and 27 days remission. He applied through the Superintendent, Central Jail, Amritsar, for temporary release under section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as the Act). His application was recommended by the Superintendent, Jail and forwarded to the District Magistrate on 18th November, 1987. The District Magistrate on the basis of the report obtained through Police did not recommend the release and the Inspector-General of Prisons, Punjab exercising delegated powers of the State Government rejected the prayer by letter dated 9th February, 1988. The petitioner has challenged the aforesaid order through this writ petition on the ground that the order of the State Government was

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illegal, arbitrary and discriminatory. The other persons who were similarly situated were enjoying the benefit of temporary release, whereas the petitioner had been denied that benefit. Along with the petitioner, his four sons had also been convicted and they were also undergoing life imprisonment and as such there was no adult-male member in family of the detenu who could attend to the land in his absence, and the whole of the village panchayat had supported his temporary release. The petitioner had been throughout of good conduct in the jail with the result that no jail punishment was awarded to **him**.

(2) In the written statement, in the form of an affidavit of Shri Dhanna Singh, Chief Probation Officer, in the office of Inspector-General of Prisons, Punjab, the actual sentence undergone and the remission earned were not disputed. It was also not disputed that the petitioner had not been awarded any jail punishment during his incarceration. In the inquiry made by the District Magistrate through the Superintendent of Police it transpired that on an earlier occasion, Swaran Singh, son of the petitioner, who is also undergoing life imprisonment, had been released, on parole sometime in September, 1986. The said Swaran Singh quarrelled with Behal Singh brother of the deceased Iqbal Singh for whose murder the petitioner and his four sons are undergoing life imprisonment. On account of that quarrel, proceedings under sections 107/151, Code of Criminal Procedure, were initiated against said Swaran Singh on 14th September, 1986. The police recorded statements of Sarup Singh and Behal Singh and on the basis of their statements, the Assistant Sub-Inspector, Police Station, Gharinda, noted that request for temporary release may not be allowed as the petitioner was a "Hard Criminal" and the complainant party apprehended "grave danger" at his hands, if allowed parole. The aforesaid report of the Assistant Sub-Inspector was endorsed by Station House Officer, Police Station, Gharinda and he described the petitioner as "a dreadful culprit and he can play with the life of others". He added that if released on parole, the petitioner would "definitely cause physical harm to the complainant party". The above report of the Station House Officer was endorsed by Deputy Superintendent of Police and the Senior Superintendent of Police, Amritsar. The District Magistrate thereupon noted that verification had been made through Senior Superintendent of Police and the Village Panchayat. He further observed that keeping in view the Public peace and tranquillity, be agreed with the report of the Senior Superintendent of Police and therefore did not recommend parole to the petitioner. It was also

stated in the return that there was no violation of Articles 14, 19 and 21 of the Constitution.

(3) Behal Singh, brother of the deceased Iqbal Singh for whose murder, the petitioner and his sons are undergoing life imprisonment, sought to file a written statement opposing the prayer made by the petitioner. This was vehemently opposed by learned counsel for the petitioner who contended that the private complainant in the main murder case, had no *locus standi* to file any written statement or of being heard.

(4) Before proceeding to deal with the petition, it is necessary to decide whether the complainant has a *locus standi* to join these proceedings and of being heard. The petitioner has arrayed the State of Punjab and the District Magistrate, Amritsar, as two respondents in the petition. In other words, the complainant has not been impleaded as a party. The question of release on parole is between the petitioner and the State. The complainant does not come into the picture. It has been repeatedly held that such prayers for temporary release are in the nature of things always opposed by the complainant party on account of being the victim of crime. The consistent view of this Court, has been that such opposition furnished no ground for refusing the prayer for temporary release. After hearing the learned counsel for the parties, I have no doubt that the complainant cannot be heard on the question whether the order passed by the State Government refusing the prayer for temporary release should be set aside.

(5) This brings me to a consideration of the merits of the writ petition.

(6) The preamble of the Act lays down that the Act was enacted for the temporary release of prisoners for good conduct. The broad aim of the Act, therefore, is to provide an incentive to prisoners to be of good conduct while undergoing sentence of imprisonment. Section 3 of the Act lays down certain grounds such as serious illness, or death of a member of the family of the prisoner, marriage of prisoner's son or daughter, for agricultural operations of the land of the prisoner, where there is no other member of the family or a friend of the prisoner to help him in this behalf and for any other sufficient cause. Section 4 relates to temporary release of prisoners on furlough. Section 6 places an embargo upon such release under section 3 or section 4, where on the report of the

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District Magistrate, the State Government or its delegate is satisfied that the release of the prisoner was likely to endanger the security of the State or the maintenance of public order. Section 8 deals with liability of the prisoners to surrender on the expiry of the release period and consequences of over-staying. Section 9 makes it an offence to over-stay, which is punishable upto 2 years' imprisonment or with fine or with both. Section 10 empowers the State Government to frame rules for carrying out the purposes of Act. In pursuance of Section 10, the State Government framed the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963. Rule 3 lays down the procedure for temporary release. Sub-Section (2) of rule 3 lays down that 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 maintenance of public order. Sub-rule (6) *ibid*, requires the Superintendent of Jail to forward to the Officer Incharge of the Police Station, within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the release certificate in the prescribed form. The sub-rule further lays down that the Officer Incharge of the Police Station shall keep a watch on the conduct and activities of the prisoners and shall submit a report relating thereto the Superintendent of Jail, who shall forward the same to the Inspector-General of Prisons. Rule 4 provides that if the person commits any offence during the period of his temporary release, the Officer Incharge of the Police Station shall forthwith send a report thereof to the Superintendent of Jail through the Superintendent of Police of the District. On such report the release warrant is liable to be cancelled by the releasing authority under sub-rule (2) of rule 4.

(7) Learned Counsel, appearing for the State, contended that use of the word "may" in section 3 as well as section 4 indicated that it was the discretion of the State Government in consultation with the District Magistrate to grant temporary release or a release on furlough and it could not be claimed as a matter of right. Dealing with a similar argument, a Division Bench in *Kesar Singh v. State of Himachal Pradesh* (1):—

“.....
Such discretionary power is coupled with the legal duty to exercise the same once the conditions for its exercise

are shown to exist. It is settled law that where a power is deposited with a public Officer for the purpose of being used for the benefit of persons who are specifically pointed out and with regard to whom a definition is supplied by the statute of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, that the Court will require it to be exercised. See : *Julius v. Bishop of Oxford* (1880) 5AC 214). According to this celebrated dictum, if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the competent Authority will be under an obligation to exercise the discretion in furtherance of such purpose (See : In re: *Kerala Education Bill*. 1957, AIR 1958 SC 956 at page 975). The exercise of power of releasing a prisoner on parole or furlough must not, therefore, be looked upon as an act of Charity, compassion or clemency but as an act in the discharge of a legal duty required to be performed upon the fulfilment of the prescribed conditions to effectuate a salutary purpose.....”

A key to the scheme of the Act is provided by section 6, where satisfaction of the State Government or the releasing authority is expressly limited to endangering security of the State and maintenance of public order. The expression “Security of State” and “Public order” occur in Article 19(2) of the Constitution. These expressions have been the subject-matter of Judicial Consideration and they have acquired a precise meaning. Thus, security of the State is endangered by crimes of violence, intended to overthrow the Government, waging of war and rebellion against the government, external aggression or war, but not by minor breaches of public peace or tranquillity, such as unlawful assembly, riot, affray, rash driving, promoting enmity between classes and the like (*vide Ramesh Thappar v. State of Madras* (2)). The concept of ‘public order’ must be distinguished from the popular concept of ‘law and order’ and of ‘security of State’. They refer to ‘three concentric circles’. Law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents security of the State (*Vide Ram Manohar v State of Bihar* (3)). Hence, an activity which affects ‘law and order’ may not necessarily effect public order and an activity which may be prejudicial to public order may not endanger

(2) 1950 S.C.R. 594.

(3) (1966)1 S.C.R. 709(746).

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security of the State. The twin grounds of endangering security of State and public order may or may not be exhaustive of the grounds for refusing temporary release, but these grounds go a long way to suggest that grounds for refusal must be these and like grounds. The apprehension that the prisoner may indulge in violence especially directed towards the members of the opposite party or the witnesses on whose testimony he was sentenced to imprisonment, does not broadly speaking justify refusal of the benefit of release envisaged under the Act. This conclusion is justified because the Act and the Rules framed thereunder contain a larger number of in-built safeguards. To mention a few of such safeguards, the temporary release is subject to such conditions as may be imposed before the release. The release is for a limited period of 4 to 6 weeks under section 3 and 3 weeks during the first year and 2 weeks during each successive year under section 4. The temporary release under section 4 is available only to prisoners, who have been sentenced to long terms of imprisonment of not less than 5 years. A condition precedent under section 4 is that the prisoners must have earned at least three annual good conduct remissions. An habitual offender, as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, or a person convicted of robbery or dacoity or such other offences as the State Government may by notification specify is not entitled to be released. Under sub-section (2) of section 8 of the Act, if a prisoner fails to surrender himself within a period of 10 days from the date on which he should have surrendered he is liable to be arrested by the police without a warrant in order to undergo the unexpired portion of the sentence. If he surrenders within the said period of 10 days before the Superintendent of Jail, the prisoner is liable to be awarded any of the jail sentence mentioned in clauses (a) to (e) of sub-section (3) of section 8. Section 9 makes it an offence for the prisoner if he fails to surrender within the time aforesaid and he is liable to sentence upto 2 years' imprisonment. Elaborate provisions have been made for constant watch on the prisoner by the local police at the place or places where the prisoner spends his period of parole or furlough. If the prisoner while on parole or furlough, commits any offence, his release order is liable to be cancelled forthwith. These provisions have been intended to provide adequate safe-guards to ensure that the released prisoner surrenders to the jail custody to undergo the remaining sentence, besides ensuring that during his release, he commits no offence. The aim of a sentence of imprisonment especially a long term imprisonment is to reform the prisoner besides

being a deterrent to him as well as others. The aim is not to make him more hardened, more brutal, more cunning and dangerous to society. (See *Rakesh Kaushik v. B. L. Vig, Superintendent, Central Jail, New Delhi and other* (4). Prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of those rights is violated, the Court which is to use the words of Krishna Iyer J. (as his Lordship then was) "net a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope" will immediately spring into action and run to his rescue. (Vide *Francis Coralie Mullin v. Administration of Union Territory of Delhi and others*, (5). One of these rights is of personal liberty. Personal liberty would include the right to socialise with members of the family and friends, subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or un-reasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21 of the Constitution of India. (*Francis Coralie Mullin*), (*supra*). A long period of incarceration where a person is cut off from the establishing influence of the family tends to brutalise the prisoner and blunt his finer sensibilities so that the end product may perhaps be more criminal than the one at the point of entry in the jail. The aforesaid observations made by the highest Court of the country apply with equal force to the case under consideration. This then is the philosophy underlying the Act.

(8) The main reason for turning down the request of the petitioner is an incident involving Swarn Singh, son of the petitioner who came on temporary release in 1986 and who had some quarrel with Behal Singh, brother of the deceased regarding which security proceedings were initiated by the police. Apart from this incident, the only other reason, is an apprehension on the part of the relations of the deceased, that if Joginder Singh is released on parole, he would indulge in violence against other members of the family of the deceased. There is a string of authorities of this Court for the proposition that persons of the opposite camp in the nature of things are bound to oppose the release and such opposition is not enough to deny temporary release if the other conditions laid down

(4) AIR 1981 S.C. 1767.

(5) AIR 1981 S.C. 746.

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in the Act and the rules are fulfilled. If the opposite camp had its way, they would oppose release of the prisoner even after he had served out the sentence imposed by the Court. What is material is whether the opposition made by the opposite camp is based on certain facts, including conduct of the prisoner, which can justly ground apprehension that release of the prisoner would endanger security of the State or would be prejudicial to public order. This is apart from the fact that the blame, if any, against Swaran Singh could not be justly laid at the door of Joginder Singh petitioner. A perusal of the return filed by the respondents makes an interesting reading. Sarup Singh and Behal Singh, brothers of the deceased Iqbal Singh mentioned about the quarrel between Swaran Singh and Behal Singh leading to security proceedings. They expressed the apprehension of grave danger from Joginder Singh if released on parole. The Assistant Sub-Inspector in his comments desired the applicant Joginder Singh as a "hardened criminal" without adding any additional fact. The Station House Officer in his report described the applicant as a "dreadful culprit" and further expressed the view that he will "definitely" cause physical harm to the complainant party if released on parole. The above reports were simply endorsed by the Deputy Superintendent of Police and the Senior Superintendent of Police. The District Magistrate noted that keeping in view public peace and tranquillity, the case was not being recommended. It is not disputed before me that apart from the murder for which the petitioner and his four sons are undergoing life imprisonment, the petitioner had no other criminal record in the past.

(9) In the result, I find that the application of the prisoner has been turned down for no valid reason. The order rejecting his prayer is arbitrary and based on no material which would justify refusal. The order of the releasing authority is, therefore, set aside and the prisoner is directed to be released as soon as possible on his furnishing bond and surety to the satisfaction of District Magistrate, Amritsar, in accordance with the provisions of the Act.

P.C.G.