

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M- 11954-2020 (O&M)

Date of Decision:- 17.4.2020

Rajinder Bassi and others ... Petitioners

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jagmohan Bansal, Advocate for the petitioners.

Mr. Gaurav Dhuriwala, Sr. DAG, Punjab.

*(the aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in Virtual Court)*

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GURVINDER SINGH GILL, J.

1. The petitioners, against whom there are allegations of having caused loss to State-Exchequer to the tune of ₹20 crores appx. by evasion of payment of GST, seek grant of interim bail, mainly on account of the prevelant conditions of spread of COVID-19 virus.
2. It has been contended on behalf of the petitioners that since a large number of inmates are confined in New District Jail, Nabha and the threat of spread of pandemic COVID-19 still looms large and since a policy has in fact been framed by the State Government for release of prisoners, the present petitioners deserve to be released on bail in terms of the policy . The learned counsel while referring to the policy(Annexure P-2) has submitted that as per the said policy the under-trials against whom cases have been registered for offences punishable for imprisonment for a period upto 7 years, are entitled to be released on bail and that the petitioners against whom a

complaint has been filed under section 132 of GST Act 2017, which is punishable for a maximum sentence of 5 years, would be fully covered under the said policy.

3. Opposing the petition, the learned State counsel submitted that keeping in view the huge amount involved in the present case i.e. ₹20 crores, the offence in question assumes enormity. It has further been submitted that the order dated 23.3.2020 of the Supreme Court would not vest the petitioners with any absolute right for their release on bail as also been clarified by Hon'ble Supreme Court itself. The learned State counsel has pointed out that in furtherance to decision taken by the high-powered committee constituted pursuant to directions of the Supreme Court, a large number of prisoners have already been released on parole or on interim bail and there is no longer any congestion in the jails. It has further been submitted that as on date there is no reported case of COVID-19 in the jail premises so as to pose any threat of spread of COVID-19 in Jail and as such the apprehension of the petitioners of contracting the virus within jail premises is misconceived.
4. I have considered rival submissions addressed before this Court.
5. The Hon'ble Supreme Court, vide its order dated 23..3.2020 had directed all the States/Union Territories to consider as to which of the prisoners '*may*' be released on interim bail or parole during the pandemic so as to decongest the jails and to prevent outbreak of COVID-19 virus in prisons. Pursuant ot said directions a Committee was constituted in State of Punjab, headed by Chairman, Punjab State Legal Services Authority and certain guidelines were laid for release of certain categories of prisoners.

6. Subsequently, vide order dated 13.4.2020, passed in I.A. No. 48260 of 2020 passed in SUO MOTU WRIT PETITION(Civil) NO.1. OF 2020, certain clarifications as regards order dated 23.03.2020 have been issued by the Supreme Court, the relevant extract of which reads as follows:

“By order dated 23.03.2020, we directed the States/Union Territories to constitute High Powered Committees which could decide which prisoners may be released on interim bail or parole during the pandemic (COVID-19). **The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable.**

The operative part of our order reads as follows:

'We direct that each State/Union Territory shall constitute a High Powered Committee comprising of'

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.'

We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was “accused” of suffering from corona virus has been reported.

We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country

and release certain prisoners and for that purpose to determine the category of prisoners to be released.”

(emphasis supplied)

7. The spirit of directions as issued by Supreme Court vide order dated 23.02.2020 and as clarified vide order dated 13.4.2020 may be discerned as follows:

- (i) The purpose of issuance of directions was to ensure that the respective States assess the situation in their prisons having regard to the outbreak pandemic and to consider release of prisoners on interim bail or parole to prevent overcrowding of prisons so that in case of an outbreak of corona virus in prisons, the spread of the disease is manageable.
- (ii) The nature of offence, the number of years to which a prisoner has been sentenced, the severity of the offence with which an under-trial is charged with or any other relevant factor, which the Committee may consider appropriate, would be the guiding factors for taking a decision.
- (iii) It has been clarified that the directions issued on 23.03.2020 were not to be interpreted so as to mean that the prisoners have to be compulsorily released from prisons.

8. It is correct that the present case is a case where the allegations against the petitioners are in respect of section 132 of GST Act 2017 which is punishable for a maximum sentence of 5 years and that as per the policy cases of under trials charged with offences punishable for a sentence of up to 7 years could be considered. However, the offence assumes gravity in view of the colossal amount involved in the present case which is ₹20 crores appx. and is certainly a factor to be borne in mind while considering the release of the petitioner on interim bail. Infact the allegations are to the effect that the petitioners had forged bills and other documents in furtherance of their designs to cause loss to State Exchequer which

prima-facie would also attract an offence punishable under section 467 IPC which is punishable with imprisonment for life.

9. Further, as has been clarified by the Supreme Court, the prisoners are not to be compulsorily released. The primary object of the directions issued by Supreme Court is to protect the health of the prisoners and restrict transmission of COVID-19 by decongestion of prisons. The move certainly cannot be treated as a windfall for all the prisoners even when there is no imminent threat or apprehension within the jail premises as on date as regards spread of pandemic. It has been informed by learned State counsel that there is no reported case of COVID-19 within jail premises and that the fresh entrants, if any, are lodged separately.
10. It was on 24th March that a complete lockdown for 21 days was imposed in the nation which stands extended up to 3rd of May. Till 24th of March there would have been a regular inflow of fresh prisoners in the jail consequent upon arrest in freshly instituted cases or on account of convictions recorded just before the lockdown. However, after imposition of lockdown in the entire nation, everything has come to a grinding halt and even the inflow of fresh inmates would have been drastically reduced. It is only when a person comes in contact with someone infected that there are chances of the other person contracting the virus. Since it is more than 3 weeks after the lockdown was imposed, the number of fresh entrants in the jail would be minimal. It has been informed by learned State counsel that there is no congestion in Nabha Jail and and that the number of inmates presently confined therein is less than the capacity of the jail and that another 47 inmates are to be transferred to other jails shortly. It has further been

submitted that there is no reported case of COVID-19 within the premises of jail. From the aforesaid facts, it can, thus, safely be said that the prisoners within the New District Jail, Nabha are relatively safe.

11. This Court also draws strength from the fact that State of Bihar has chosen not to release any of the prisoners as the jails are not congested and there was no reported case of corona virus in the jails and the said fact was duly noticed by Supreme Court in its order dated 13.3.2020. Since the Nabha Jail already stands decongested and there is no reported case of COVID-19 within the premises of jail, therefore keeping in view the nature and gravity of offence and the amount involved this Court does not deem it appropriate to grant interim bail to the petitioner. The application, as such, is dismissed.
12. Before parting with this order, it is directed that the Superintendent, Jail would ensure that that all the required cautions and safeguards are duly adhered to whenever any new inmate is admitted to jail and would get him/her medically examined and keep him/her segregated from other inmates atleast for a period of 14 days so as to rule out any chance of spread of epidemic within jail premises in case such fresh prisoner happens to be infected with COVID-19 although he may not initially have shown any such symptoms.
13. It is however clarified that dismissal of this application for grant of interim bail shall not have any bearing on consideration of any application for grant of regular bail on merits.

17.4.2020

Gaurav Sorot

Whether speaking /reasoned
Whether Reportable

(Gurvinder Singh Gill)

Judge

Yes / No
Yes / No