



In the High Court of Punjab and Haryana at Chandigarh

CRWP No. 3259 of 2024

Reserved on : 24.4.2024

Date of Decision: 27.5.2024

Achan Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Eklavya Darshi, DAG, Punjab.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner seeks the quashing of the order dated 6.3.2024 (Annexure P-1), passed by respondent No. 3, whereby the petitioner's prayer for his becoming released, on parole for a period of eight weeks, has been declined. The petitioner also seeks the relief of parole under Sections 3 and 4 of the Punjab Good Conduct Prisoners' (Temporary Release) Act, 1963 (for short 'the Act of 1963').

2. The present petitioner has been convicted and sentenced by the learned trial Court concerned, to undergo life imprisonment, in case bearing FIR No. 06 of 4.2.2017, registered under Section 302/34 of the IPC, at Police Station Begowal. The above made verdict of conviction, and, consequent thereto sentence(s) (supra), as became imposed upon the convict, has been challenged by him through his rearing a criminal appeal bearing No. CRA-D-697 of 2021, before this Court.



3. During the pendency of the appeal (supra) before this Court, the convict preferred an application, claiming therein the relief of his becoming released on parole, lasting upto a duration of eight weeks, rather for the relevant purpose. The authority concerned, after eliciting the report of the police officer concerned, has made a declining order on the relevant application, and, the above declining order, which becomes enclosed in Annexure P-1 to the instant petition, has led the petitioner to access this Court.

4. Before proceeding to determine the validity of the declining order (Annexure P-1), as became passed by the competent authority concerned, it is necessary to allude to the provisions relating to the granting of parole to a convict-prisoner. The said rules/statutory provisions become embodied in Section 3 of the Act of 1963.

“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 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 Distt. 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.

(3) If after making such enquiry as it may deem fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant in Form B ordering the temporary release of the prisoner, specifying therein (1) period of release, (ii) the place or places which the prisoner is allowed to visit during the period of such temporary release, and the amount for which the security bond and the surety bond shall be furnished by the prisoner in Forms C and D respectively:

Provided that the amount of the security bond and the surety bond shall not exceed twenty thousand rupees in each case.

(4) On receipt of the release warrant the Superintendent of Jail shall inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail to the District Magistrate.

(5) On receipt of the information from the District Magistrate that the necessary bonds have been furnished, the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

(6) The Superintendent of Jail shall also immediately forward to the Officer-in-charge 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 Form E. The Officer incharge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the



Superintendent of Jail who shall forward the same to the Inspector-General.

(7) The date of release as well as the date on which the prisoner surrenders himself under sub-section (1) of section 8 of the Act shall be reported by the Superintendent of Jail to the Inspector-General who will inform the Government accordingly.”

5. Though, in terms of the above extracted statutory provisions, the District Magistrate concerned, has made speakings in Annexure P-1, that on the prisoner becoming released on parole rather there would be no danger to the State security, peace, and, harmony, besides he has also referred to the local police having no objection, thus on the petitioner becoming released on parole. However, a reference is also made to letter bearing No. 11 dated 1.1.2024, transmitted through Station House Officer, Police Station City Faridkot, to take legal action against the prisoner on account of his breaching the jail rules by his keeping a mobile phone with him. Consequently, in terms of the said letter, the prisoner's claim for his being released on parole from the prison concerned, thus became rejected.

6. It appears, that the said rejection has been made in terms of Section 45 of the Prisons Act, 1894 (for short '*the Prisons Act*'), and, in terms of Para 607 of the Punjab Jail Manual, provisions whereof become extracted hereinafter.

“Section 45 of the Prisons Act

[45]. Prison offences.-The following acts are declared to be prison-offences when committed by a prisoner:

- (1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;*
- (2) any assault or use of criminal force;*



- (3) *the use of insulting or threatening language;*
- (4) *immoral or indecent or disorderly behaviour;*
- (5) *willfully disabling himself from labour;*
- (6) *contumaciously refusing to work;*
- (7) *filling, cutting, altering or removing handcuffs, fetters or bars without due authority;*
- (8) *willful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;*
- (9) *willful mismanagement of work by any prisoner sentenced to rigorous imprisonment;*
- (10) *willful damage to prison property;*
- (11) *tampering with or defacing history-tickets, records or documents;*
- (12) *receiving, possessing or transferring any prohibited article;*
- (13) *feigning illness;*
- (14) *wilfully bringing a false accusation against any officer or prisoner;*
- (15) *omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official; and*
- (16) *conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.”*

“Para 607 of the Punjab Jail Manual

607. Further rule defining and regulating prohibited articles. - Every article, of whatever description, shall be deemed to be a prohibited article within the meaning of section 42 and clause (12) of section 45 of the Prisons Act, in the case of -

(1) A prisoner - if introduced into or removed from any jail, or received, possessed or transferred by such prisoner, and such article has -

(a) not been issued for his personal use from jail stores or supplies, under proper authority,



- (b) been so issued, if possessed or used at a time or place other than such as is authorised; or*
- (c) not been placed in his possession for introduction, removal or use, as the case may be, by proper authority.*
- (2) A jail-official - if introduced into or removed from any jail or supplied to any prisoner and such article -*
- (a) has not been issued or sanctioned, for his personal use by proper authority;*
- (b) is not an article of clothing necessary for his personal wear; or*
- (c) has not been placed in his possession by proper authority for introduction into or removal from the jail or for the purpose of being supplied to any prisoner;*
- (3) A visitor - if introduced into or removed from any jail, or supplied to any prisoner and such article -*
- (a) is not required for his personal use while within the jail and has not been declared by him before entering the jail, and the introduction into or removal from the jail, or possession, of which while in the jail, has not been permitted by proper authority,*
- (b) is introduced, with or without authority, and is not retained in his possession until he has left the jail premises; or*
- (c) comes into his possession while within the jail, and is subsequently removed by him from the jail,*
- (4) Any other person - if introduced into or removed from any jail, or supplied to any prisoner, whether within or without the jail.”*

7. For breach(es) being done to the above extracted mandates, as carried in Para 607 of the Punjab Jail Manual, the consequent penal consequences become prescribed in Section 42 of the Prisons Act, provisions whereof become extracted hereinafter.

“42. Penalty, for introduction or removal of prohibited articles into or from prison and communication with



prisoners:- *Whoever, contrary to an rule under section 1 [59] introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicate or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred rupees or to both.”*

8. It appears, that the recovery of a mobile phone, from the prisoner-petitioner, during the term of his serving the substantive sentence of imprisonment, thus in the prison concerned, thus thereby has led to, ill attraction qua him vis-a-vis the relevant provisions of the above extracted Para 607 of the Punjab Jail Manual, whereunders, there is a bar against his introducing into the jail concerned, thus the said mobile phone, especially when the same was not issued for his personal use from jail stores or supplies, under proper authority, besides when it has not been purportedly placed in his possession for his use as the case may be, by the proper authority.

9. In nutshell, the mobile phone, as became recovered from the present petitioner, during the term of his spending the prison term, has led to the cultivation against him of the above stated mandate, as carried in Para 607 of the Punjab Jail Manual, which may ultimately result in his facing the penal consequences, as spelt out in Section 42 of the Prisons Act, provisions



been stated to be working as a deterrent against the present petitioner, for therebys his as such becoming granted the relief, as claimed in his application, has not resulted in an FIR becoming registered against him, nor the trial against him has opened, whereas, in terms of the said breach being made by him, thereupon within the purview of Section 42 of the Prisons Act, thus he was required to be tried by a Magistrate, and, was to be as such, if found guilty of the charge, as became drawn against him, to be handed down a conviction by the trial Magistrate, and, subsequently he was required to be sentenced to undergo imprisonment rather not exceeding six months or to a fine not exceeding Rs. 200/- or to both. Therefore, the mere detection of a mobile phone, but even without the said incident resulting in an FIR becoming registered, nor the trial in respect thereof becoming entered into by the trial Magistrate concerned, has resulted in the declining order (Anenxure P-1) becoming passed. The above prima facie for reasons to be assigned hereinafter, has a strikingly, and, telling effect.

10. The learned State counsel submits, that though in the Act of 1963, no provisions exist thus alike the ones, as became previously carried in the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act of 1988'), whereunders a hardcore prisoner became defined in Section 2(aa) of the Act of 1988, nor when alike Section 2(1)(g), wherein a hardcore prisoner has been defined, provision whereof occurs in the extant/freshly enacted legislation, and, to which the nomenclature the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (for short 'the Act of 2022') is assigned, rather any corresponding assented to legislation becomes passed by the Punjab Legislative Assembly.

Nonetheless, he submits, that when the above extracted provisions, as



respectively embodied in the Prisons Act, and, in Punjab Jail Manual, thus are almost synonymous to the apposite deterrence, as becomes created in the statute(s) (supra), thereby the apposite therein created deterrence is applicable to the instant case, and, thereby in terms thereof, the declining of relief to the present petitioner, rather is a well made declining.

“2(aa) "hardcore prisoner" means a person, who -

- (i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or*
- (ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone imprisonment atleast for a period of twelve months: Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded. Explanation. - A conviction which has been set-aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or*
- (iii) has been sentenced to death penalty; or*
- (iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or*
- (v) failed to surrender himself within a period of ten days*



from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act;]”

11. The relevant provisions, as carried in the Act of 1988, and, in the Act of 2022 are extracted hereinafter.

<i>Haryana Good Conduct Prisoners (Temporary Release) Act, 1988</i>	<i>Haryana Good Conduct Prisoners (Temporary Release) Act, 2022</i>
<i>2(aa) “hardcore prisoner” means a person, who-</i> <i>(iv) has been detected of using cell phone or in possession of cell phone/Sim card inside the jail premises’ or</i>	<i>2(1)(g) “hardcore convicted prisoner” means any prisoner-</i> <i>(iv) who has been found in possession or detected of using wireless communication device or its components or any unauthorized electronic device inside the jail premises; or</i>
<i>‘5A. Special provisions for temporary release of hardcore prisoners:-</i> <i>(1) Notwithstanding anything contained in Sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:</i> <i>Provided that a hardcore prisoner may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned Superintendent of Jail:</i> <i>Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.</i>	<i>Section 6-Temporary Release of a convicted prisoner on custody parole and special provisions for hardcore convicted prisoners</i> <i>(3) Notwithstanding anything contained in sub-section (1), a hardcore convicted prisoner, who has not been awarded death penalty or life imprisonment till natural life and has completed five years of his sentence (including maximum two years under trial period), without police committing any major jail offence or any cognizable offence during the last five years, shall be entitled for emergency parole or regular parole or furlough at par with convicted prisoners. Such period of five years shall be counted from the date of his latest offence or act which falls under the category of hardcore convicted prisoner:</i> <i>Provided that a hardcore convicted prisoner who District has been sentenced for imprisonment till natural life shall be eligible for emergency parole or regular parole at par with convicted prisoners only after completion of seven years of</i>



<u>(2) Notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not co been awarded any major punishment by the Superintendent of jail, as judicially appraised by the concerned District and Sessions Judge:</u> <i>Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:</i> <i>Provided further that if the of prisoner so released under this sub- section violates any condition of temporary release or furlough, he shall be debarred</i>	<i>imprisonment after conviction: Provided further that if the hardcore convicted prisoner so released temporarily violates any condition of parole or furlough or commits any cognizable offence, he shall be debarred from such release for next three years.</i> <i>(4) Convicted prisoner including hardcore convicted prisoner may be granted custody parole without taking into account his period of completion of sentence for attending funeral of his family member or marriage of his children or siblings.</i>
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12. Consequently, he argues, that when in the said non-obstante clause, it is mandated, that a convicted hardcore prisoner, who has not been awarded death penalty or life imprisonment till natural life, would be entitled for emergency parole or regular parole or furlough, only if he has completed five years of his imprisonment but subject to a further condition that he is not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.

13. Therefore, the learned State counsel submits, that in view of the provisions (supra), but alike the supra are enclosed in the Punjab Jail Manual, and in respect whereof a punishment is prescribed in the Prisons Act, therebys as such, when the said provisions are almost synonymous to the above extracted provisions, as respectively define the “hardcore prisoner” in the repealed Act of 1988, and, in the Act of 2022. Moreover,



when in the occurring therein apposite non-obstante clause, thus in Section 5-A of the Act of 1988, there is a bar against the release of a hardcore criminal on parole, as the present applicant is, thus upon his committing the jail offence concerned. Therefore, he argues, that when the intent of Punjab Jail Manual, thus is similar to the intent of the above assented to statutes, as become enacted by the Haryana State Legislative Assembly. Consequently, he submits, that when a Full Bench of this Court in **CRWP-1890-2020**, titled as ***Kulwant alias Monu versus State of Haryana and others***, while answering the hereinafter extracted reference, ultimately upheld the decision made by a Division Bench of this Court, in case titled as ***Vakil Raj versus State of Haryana and others*** reported in **2016(2) RCR (Criminal) 1040**, and, disagreed with the verdict recorded by this Court in **CRWP-1374-2017**, titled as ***Gurdeep Singh versus State of Haryana and others***.

“For the purposes of interpretation of the expression ‘hardcore prisoner’ under section 2(aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, is it necessary that the prisoner, who is detected using or in possession of a cell phone/SIM card inside the jail premises, should, in order to be disentitled to temporary release on parole or furlough, be convicted by a Court for the corresponding offence under sections 42/42A of the Prisons Act as applicable to Haryana or even if only punished by the prison authorities under section 46 of the Prisons Act?”

14. In sequel, he further contends, that since in the judgment made by the Full Bench of this Court in ***Kulwant @ Monu***’s case (supra), the thereunder issue for consideration, relates to an issue alike the one, as is existing in the instant case, and, as relates to whether the mere detection of a mobile phone, even without any conviction in respect thereof becoming recorded, upon the convict-prisoner, thus would result in denial of parole to him. Therefore, he submits, that with the verdict rendered by the Full Bench of this Court, thus declaring that mere detection of a mobile phone from an



incarcerated prisoner rather disentitling him to claim the relief of parole, but is required to be assigned the fullest clout and sway, and, thereby the instant petition is required to be dismissed.

15. At the outset, the Bench strength of the Full Bench of this Court is obviously superior qua the Bench strength of this Court, and, thereby this Court is required to be revering the verdict made by the Full Bench of this Court in *Kulwant @ Monu's* case (supra), which became rendered on 26.8.2022, whereby the afore answer was made to the above extracted reference.

16. Nonetheless, to the considered mind of this Court, a reference to a Bench larger in size than the Bench which made the verdict in *Kulwant @ Monu's* case (supra), is yet required to be made. The reasons for making a reference to a Bench larger in size than the Bench which pronounced the *Kulwant @ Monu's* case (supra) are as follows, and, the terms of the reference are made hereinafter.

17. Initially, it is required to be stated, that a Division Bench of this Court, which delivered verdict in *Gurdeep Singh's* case (supra), thus was dealing with the issue relating to denial of parole to a hardcore prisoner, as defined in the repealed Act of 1988, with therein occurring a non-obstante clause, whereby on the mere detection of a mobile phone from the prisoner concerned, during the tenure of his spendings incarceration in the prison concerned, thus privilege of parole became earlier denied. On the said conundrum the hereafter extracted speakings were made in para 3 thereof, para whereof becomes extracted hereinafter.

“We have heard learned counsel for the parties and gone through the record. While this Court, in no uncertain terms, holds that the jail inmates cannot be allowed to keep mobile phones or such other



gadgets etc. which are oftenly used to commit professional crimes like demand of ransom, kidnapping etc.etc.. Nevertheless, it is an integral part of the jail reforms that the inmates should be provided with telephone facilities to connect themselves with their family, nears and dears. Such a facility can be made available by the jail authorities through a land line number(s). In this backdrop, it is difficult to accept that the mere recovery of mobile phone from an inmate against whom there is not even a whisper that he ever misused the phone either to blackmail some one or for demanding ransom or he involved himself in any other nature of crime, would be sufficient to categorise him as a 'hardcore' prisoner. It is only in a case where the inmate is found to have misused the mobile facility for committing another crime while inside the jail, that he should be put into the category of 'hardcore criminals' and be deprived of his statutory right of parole. The petitioner, in the absence of any such allegation, does not fall in that exceptional category. We, thus, set aside the objection raised by the respondents and direct the Competent Authority to consider the case of the petitioner for his release on agricultural parole. The appropriate order shall be passed within one week from the date of receipt of a certified copy of this order.”

18. However, the Division Bench of this Court in *Vakil Raj*'s case (supra), contrarily concluded, in para 17 thereof, para whereof becomes extracted hereinafter, but while upholding the constitutional vires of the above extracted provisions, carried in the repealed Act of 1988, ultimately concluded, that the convict, who does not maintain jail discipline, thus thereby, he becomes disentitled to parole, as one of the conditions of grant of parole is good behaviour even in custody, and, that though the mobile is a facility for use of citizens, but such right is not with the prisoner. In consequence, merely, upon the Jail Superintendent concerned or the staff of the prison concerned, detecting that the prisoner concerned, is unauthorizedly keeping a mobile phone with him, thus would lead to the ill-consequence of his therebys, even without his becoming convicted, yet his forfeiting the privilege of his being released on parole.



“Thus, a convict, who does not maintain jail discipline, is not entitled to parole as one of the conditions of grant of parole is good behavior in custody. Though mobile is a facility for use of citizens, but such right is not with the prisoner. The personal rights of a convict stand suspended including the right of free movement. Therefore, imposing a condition that use of mobile, which has the potential of misuse, will disentitle a convict for grant of parole, cannot be said to be unjustified, as it is a requirement introduced for maintaining discipline and a good behavior in jail.”

19. Obviously the said view propounded in *Vakil Raj*'s case (supra), is contrary to the view propounded in *Gurdeep Singh*'s case (supra). In the above extracted paragraph, carried in *Gurdeep Singh*'s case (supra), it became propounded, that the mere recovery of mobile phone from the jail inmate against whom there is not even a whisper that he ever misused the phone either to blackmail someone or for demanding ransom or his indulging in any other nature of crime, would not be sufficient to categorise him as a hardcore prisoner. It is also stated in *Gurdeep Singh*'s case (supra) that, only in case where the jail inmate is found to have misused the mobile facility to commit the crime while inside the jail, that thereupon, he should be put into the category of hardcore criminals, and, thereby would become deprived of his statutory right of parole.

20. Be that as it may, since the constitutionality of the above extracted provisions became upheld in *Vakil Raj*'s case (supra), and, the upholding of the above extracted provisions rather has not been set aside, through a verdict becoming pronounced by the Hon'ble Apex Court. Resultantly, the judicially declared constitutionality of the provisions (supra), as carried in the above assented to now repealed legislation, thus carries worthwhile weight.

21. Nonetheless, assuming that the claim for parole is a mere privilege, and, is not any conferment of any infeasible right, upon the prisoner concerned. Moreover, even though the maintainings of good



conduct, and, also the maintainings of prison discipline, but is a valid paramount parameter, thus for the prisoner earning the privilege of parole. However, since the robust principle of criminal jurisprudence, but encapsulates the trite rubric, that an accused/prisoner is presumed to be innocent unless pronounced guilty. Resultantly to the considered mind of this Court, the said principle is necessarily required to be applied also in the event of denial of the privilege of parole to the prisoner concerned, thus merely founded upon a mobile phone becoming recovered from his possession, and, that too yet neither any trial becoming entered against him, nor any punishment becoming awarded to him.

22. Prima facie, if the denial of parole to the inmated prisoner founded, upon the above premise becomes countenanced, thereupon, it would lead to the hereinafter prima facie ill-consequences.

(a) That the reports in his favour, that on his being released on parole, there would be no danger to the peace, and, security, rather would become completely redundant.

(b) That when even in respect of heinous crimes, subject to imposition of certain exacting conditions, the accused concerned may be granted the indulgence of bail by the Courts of competent jurisdiction, yet the denial of parole to the inmated prisoner merely on his found to be possessing a mobile phone, by the jail staff, which may ultimately result in only a minimal sentence of imprisonments of fine becoming imposed, upon him, thus whether thereupon the said condition is harsh, oppressive, and, reasonable, and, therebys the upholding of the said deterrence requires re-consideration. Concomitantly



therebys the release on parole when may be a privilege, to be thus conferred, upon the prisoner, but when the apposite jail offence relating to the prisoner becoming detected to be unauthorizedly holding the possession of a mobile phone, thus remains yet in the realm of an allegation, or remains unproved, that when yet the apposite restriction against the availment of the said privilege does bring the further oppressive ill-casuality qua the apposite emergent, and, critical purpose, wherebys he is led to ask for parole, rather becoming completely baulked.

23. Prima facie, therebys the snatching of the said privilege merely on the unproved allegation, thus to the considered mind of this Court requires reconsideration from a larger Bench, than the Bench which pronounced *Kulwant @ Monu's* case (supra).

24. The hereinabove extracted provisions, as carried in the Act of 1988, when mandate, that the mere awarding of any major punishment by the Superintendent of Jail, dehors non adherence qua the provisions of fair trial, as encapsulated in Article 21 of the Constitution of India, but merely on becoming judicially appraised by the District and Sessions Judge concerned, thus ill-attract the mandate of the apposite non-obstacle clause, vis-a-vis the prisoner, wherebys, in the event of the inmated prisoner becoming detected to be unauthorizedly holding possession of a mobile phone, therebys the prisoner forfeits the privilege of his becoming released, on parole from the prison concerned.

25. Emphatically, the above aspect has not been considered by the Division Bench of this Court, which pronounced *Vakil Raj's* case (supra), nor the said aspect has been considered by the Full Bench of this Court,



which drew a verdict in *Kulwant @ Monu's* case (supra). The said statutory provision is prima facie but in derogation of the right of an accused-prisoner to claim an effective, and, fair trial, thus in terms of Article 21 of the Constitution of India, before the jurisdictionally competent Court of Law. However, the non obstante clause(s), as carried in the Act repealed of 1988, when but does authorize the Superintendent of the Jail concerned, to impose punishments, and, though there appears to be some safeguard against any errors seeping into the said awarding of punishment by the Jail Superintendent concerned, through the said punishment becoming judicially appraised by the District and Sessions Judge concerned. However, the constitutional principle of fair trial, when requires that the fullest opportunity becomes afforded to the accused, to engage a defence counsel, for cross-examining the prosecution witnesses, and, also his being permitted to adduce defence evidence, when appears to be yet put in the back-burner, through the above mandate(s) enclosed in the said non-obstante clause. Consequently, the said whittling down or the truncations of the constitutional principle of fair trial, despite prima facie requiring adherences theretos being made, whereas, the judgment made by the Division Bench of this Court in Vakil Raj's case (supra), and, the judgment made by the Full Bench of this Court in *Kulwant @ Monu's* case (supra), to the considered mind of this Court, prima facie not undertaking in their respective considered minds, thus the exercises of evaluating the processes relating to meteing or awarding of punishments to the prisoner concerned, by the jail Superintendent, inasmuch as, qua the fairness of trial as entered into by the Superintendent of the Jail concerned, in respect of the relevant jail offence, thus being in alignment with the principles of fair trial, as are required to be adopted by the Criminal



Court of competent jurisdiction while entering upon a trial against the accused.

26. Since obviously the criminal Courts of competent jurisdiction while making trial(s), upon a charge framed against the accused are imperatively required to be, if the accused does not plead guilty of the charge, rather making insurances, upon the prosecution to ensure the stepping into the witness box of the prosecution witnesses concerned, and, are also required to ensure the making of an efficacious cross-examination, upon the prosecution witnesses concerned, through the latter engaging a defence counsel. Moreover, subsequently on completion of the statement of the accused under Section 313 Cr.P.C., the accused is required to be granted an opportunity to adduce defence evidence. However, the trial as became earlier entered into by the jail Superintendent vis-a-vis the jail offence, thus allegedly committed by a prisoner, when prima facie thus debars him to make recourses to the above contemplated statutory insurances, as become encumbered upon the criminal Court of competent jurisdiction, whereas, the adoptions of the above procedures, thus on the touchstone of Article 21 of the Constitution of India, are but a sine qua none for the makings of a fair trial, upon an accused.

27. In consequence, the prima facie overlookings of the said facets by the Division Bench of this Court in *Vakil Raj*'s case (supra), and, also by the Full Bench of this Court while making a verdict upon *Kulwant @ Monu*'s case (supra), does thereby require re-reconsideration. Moreover, to the said extent, certain guidelines or reading downs of the constitutionality of the provisions (supra), which have been upheld in a judgment delivered in *Vakil Raj*'s case (supra), may be required to be considered to some extent to



either become diluted vis-a-vis its rigour or some guidelines for whittling down the exacting rigour of the said statutory provisions are required to be prescribed so as to ensure that therebys, the trial as became entered upon by the Superintendent of Jail concerned, vis-a-vis the accused who became tried by the latter for the commission of a jail offence, is ensured to be brought in harmony with the constitutional principle of fair trial, as enshrined in Article 21 of the Constitution of India. The beneficent consequences thereof, thus would also well accrue to the prisoners concerned.

28. The non-obstante clause occurs in the Act of 1988, whereas, it does not make its appearance in the replacing thereto Act of 2022. Therefore, therebys it appears, that the assented to legislation nomenclatured as the Act of 2022, was a sequel of holistic wisdom prevailing upon the law makers to cause deletion of the said oppressive, and, harsh non-obstante clause, thus on the ground, that it negates the principle of fair trial, as enshrined in Article 21 of the Constitution of India.

29. The effect of non-retention of the said non-obstante clause in the Act of 2022, does also have a consequent, and, telling effect, upon the arguments (supra) raised before this Court by the learned State counsel(s), that since the Full Bench of this Court, has upheld the verdict delivered in *Vakil Raj*'s case (supra), whereby the mere possession of a mobile phone by the inmate prisoner ipso facto entails upon him the ill-consequence of his forfeiting the privilege to earn parole, thereby the instant petition requiring dismissal, rather also prima facie becoming weakened.

30. Moreover, the further striking effect thereof, is that, when the learned State counsel has further argued, that even when there is no such non-obstante clause like the one, as is carried in the repealed Act of 1988,



thus in the Punjab Jail Manual, and, in the Prisons Act, yet the said repealed non-obstante clause, be ensured to be effectively work against the present petitioner, does also require qua the same becoming rejected by this Court.

31. Therefore, for overcoming the above prima facie snags, as occur in the Division Bench judgment made in *Vakil Raj's* case (supra), and, also in the judgment made by the Full Bench of this Court in *Kulwant @ Monu's case* (supra), while negating the contra views (supra), as became taken by this Court in *Gurdeep Singh's* case, whereby, merely on detection of a mobile phone, the prisoner was debarred from claiming privilege of parole, thereupon the verdict rendered by the Full Bench of this Court in case (supra) does require re-consideration.

32. Conspicuously also, when the prisoner concerned, becomes reported to the competent officer, qua on his being so released on parole, rather his not disrupting the peace and harmony, besides when on his being released on parole, thus he is required to be also furnishing the requisite bail bonds/surety bonds. Moreover, when certain other onerous, and, exacting conditions relating to, in case he does not re-step into the prison concerned, thereupon the jurisdictional SHO concerned, being directed to forthwith arrest him, and, produce him before the jurisdictional Magistrate concerned, for thereafter the latter making an order of juridical remand upon him, may also be imposeable upon the prisoner, to ensure that he does not breach the conditions of parole. Resultantly, the denial of parole to the inmated prisoner on the grounds synonymous to the grounds, prima facie is reiteratedly exacting, oppressive, and, appears to breach Article 21 of the Constitution of India.

33. Be that as it may, when in certain exceptional situations, even



proclaimed offenders, on the imposition of exacting conditions upon them, become accorded the facility of bail, whereas, yet entailing vis-a-vis an incarcerated prisoner, thus the ill-consequences of forfeiture of right of parole to him, thus when the alleged jail offence, is yet in the realm of suspicion, thus would tantamount to rather ill placing a prisoner in a situation into which a proclaimed offender may not in certain circumstances be put into. As such, the reliance upon the said deleted non-obstante clause, by the learned State counsel concerned, thus banked upon almost similar thereto provisions becoming cast in the Prisons Act, and, in the Punjab Jail Manual, to rather deprive the jail prisoner from the privilege of parole, thus merely upon his being found unauthorizedly possessing a mobile phone in the prison concerned, appears to be prima facie extremely onerous, and, arbitrary, and, that too when as stated (supra) no fair trial has yet been entered against him, nor he has been convicted.

34. In addition, if the maximum term of sentence of imprisonment as may become imposed, upon the prisoner prima facie, is the one which may be imposed upon an accused who becomes convicted of petty offences, as such yet depriving a prisoner of the privilege of parole, thus also thereby appears to make a very unworthy encumbrance upon him, besides the said appears to be extremely harsh, and, oppressive.

34. There are situations where even with respect to offenders who repeatedly indulge in commission of heinous offences, that Courts of law are leaned to grant bails to such habitual offenders, thus on imposition of rigorous, and, exacting conditions, upon them. Contrarily when vis-a-vis the jail offence (supra), which otherwise for the reasons (supra), rather is a petty offence, thus the prisoner forfeits his right to earn parole, thus thereby the



said provision prima facie appears to be extremely harsh, and, excessive, besides prima facie appears to be contrary to the constitutional principle of liberty, as enshrined in Article 21 of the Constitution of India.

35. The reference to be made to the Bench strength of this Court larger in size than the Bench strength, which pronounced the verdict in *Kulwant @ Monu*'s case, is cast in the hereinafter manner.

(i) Whether without any conviction becoming handed over by the regular Court concerned, the mere detection of unauthorized possession of a mobile phone from the prisoner concerned, does disentitle him to seek the privilege of parole, especially when even in heinous offence, subject to imposition of certain exacting conditions, the regular Courts of competent jurisdiction can grant bail to the accused concerned.

(ii) Whether the procedure for awarding of punishments, as envisaged in the relevant provisions whereby conferment of jurisdiction is made upon the jail Superintendent to award punishment, is in alignment with the procedure for fair trial being made by the regular Courts of competent jurisdiction vis-a-vis the accused, inasmuch as, when the criminal Courts of competent jurisdiction make trials upon the accused, they are to ensure that the prosecutions witness are permitted to be cross-examined by the accused, through his engaging a defence counsel, besides after completion of proceedings under Section 313 Cr.P.C., they are to ensure that the accused is permitted to adduce defence evidence ? Whether as such with the Superintendent of the jail concerned making departures from



the said procedures, he can be construed to make well trials as well as make the consequent thereto punishments irrespective of the same becoming judicially appraised by the Sessions Judge concerned, and, if not, the consequent beneficent effect thereto vis-a-vis the prisoner concerned.

(iii) Resultantly whether therebys the said denial of privilege of parole to the prisoner yet on the stated supra deterrence,, despite the fact, that the elicited reports from the authorities concerned, do not reveal, that on his becoming released on parole, therebys, he would endanger the public peace, and, security, rather would beget conflict with principles relating to criminal jurisprudence, that till an accused is found guilty, thereupto he is presumed to be innocent?

(iv) Whether the mandate recorded by the Full Bench of this Court that, that the mere unauthorized possession of the mobile phone without his becoming convicted would disentitle the inmated prisoner to earn the privilege of parole, is correctly founded, despite no evidence emerging qua the inmated prisoner misusing the mobile phone for any ill purpose. Strikingly also, when in the instant age of technological advancements, the accessings made by the inmated prisoner, to the available internet means, thus from/within the electronic gadgets when, thus subserve the holistic purpose of safeguarding the fundamental right of life, therebys if the said accessings yet are forbidden, whether therebys the right to life becomes truncated.



(v) Whether the possession of a mobile phone by the inmates prisoner, thus for the apposite holistic purpose(s), but subject to a regulatory mechanism becoming devised by the prison authorities, thereby there would be an advancement to the constitutional principles of right to life, as enshrined in Article 21 of the Constitution of India.

(vi) Whether the convictions, if any, as became recorded against the prisoner, accused of a jail offence, despite not becoming premised on such evidence reflecting that, he was not misusing the mobile phone for any ill-purposes, whether yet the Full Bench of this Court could proceed to declare, that thereby the prisoner becomes disentitled to claim the privilege of parole, and, as such, whether thereby the said aspect is required to be further re-considered by a Bench strength of this Court larger in size from the one, which made the judgment in *Kulwant @ Monu's* case (supra) ?

(vii) Whether the above extracted provisions carried in the Punjab Jail Manual, and, when on breaches thereof, becoming made at the instance of the purportedly errant prisoner, when do require, trial being entered upon him by the learned Judicial Magistrate concerned, thereupon whether prior to his becoming convicted by the learned trial Court concerned, the prisoner can be deemed to be guilty, especially when the rule of criminal jurisprudence, is that, he is presumed to be innocent, till found guilty, especially when there may not be such evidence disclosing, that he had any mensrea to commit crimes through



user of the said mobile phone ?

(viii) Whether merely in the wake of the FIR being lodged, and, no trial becoming entered into, and, no conviction becoming handed upon the prisoner concerned, whether therebys the denial of privilege of parole to the prisoner concerned, is apt or tenable, especially when the regular Courts of competent jurisdiction do grant bail to the habitual offenders concerned, but subject to imposition of exacting and rigorous conditions upon him ?

(ix) Whether the judgment delivered by of the Full Bench of this Court in *Vakil Raj's* case (supra) when became so delivered in respect of a non-obstante clause, which has however been repealed through enactment of the Act of 2022, wherein, there is no alike thereto non-obstante clause, whether it still holds force so as to now also empower the prison authorities to deny parole in the State of Haryana, thus on the said basis.

(x) When there is no corresponding thus provision in the Punjab Jail Manual, and, in the Prisons Act, whether yet the prison authorities in the State of Punjab, can merely on the basis of the judgment delivered by the Full Bench of this Court in *Vakil Raj's* case (supra), which otherwise became delivered in terms of a repealed act, thus passed a declining order on the prisoner's parole application.

36. The order of this Court be placed before the Hon'ble Acting Chief Justice for his constituting a Bench, larger in size than the quorum of



the Bench strength, which pronounced *Kulwant @ Monu*'s case (supra).

37. In terms of discussion (supra), however, as an interim measure, and, not as a precedent, the petitioner is ordered to be released on parole but only for a period of two weeks, from the prison concerned, but subject to his furnishing personal and surety bonds in a sum of Rs. One Lakh each, and, to the satisfaction of the Superintendent of Jail concerned, where he is extantly lodged, and, with an undertaking therein that immediately on expiry of the afore period, he shall re-step into the prison concerned, and, also subject to yet no conviction in respect of the jail offence by the Criminal Court of competent jurisdiction becoming handed over to the present petitioner.

38. If the above condition is breached, and, the petitioner does not re-step into the prison concerned, immediately on the expiry of the above period, thereupon, liberty is reserved to the jurisdictional SHO concerned, to forthwith arrest the petitioner, and, to thereafter produce him before the jurisdictional Magistrate concerned, for the latter making an order for the petitioner becoming committed to the prison concerned.

39. With the afore observations, the instant petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

May 27, 2024
Gurpreet

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