

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRWP No. 1097 of 2014
Date of decision : 08.05.2015**

Rakesh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.A.S.Trikha, Advocate
for the petitioner.

Mr. R.S.Doon, AAG, Haryana
for respondents no. 1 to 3.

DARSHAN SINGH,J(Oral)

The present criminal writ petition has been filed under Article 226 of Constitution of India for issuance of any appropriate writ directing the respondents to reconsider the case of the petitioner for grant of agro-parole to cultivate agro-land jointly held with his father aged about 65 years, under Section 3(1)(c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (in short 'Act') subject to the satisfaction of District Magistrate, Jhajjar.

The petitioner was convicted in case FIR No. 282 dated 11.08.1997, under Section 302/ 34 of Indian Penal Code, Police Station Sadar Bahadurgarh and was sentenced to undergo life imprisonment. His

appeal against conviction has also been dismissed by this Court. The Superintendent District Jail, Jhajjar has recommended the agro-parole case of the petitioner. But, the same was declined by the Commissioner, Rohtak Division, Rohtak on the ground that the case of the petitioner falls under the category of the “Hardcore Prisoner” without passing any speaking order. It is pleaded that the petitioner does not fall under the category of hardcore prisoner. Moreover, as per the provisions of the Act, the petitioner is entitled for agro-parole for six weeks in a year. The provisions of the amended Act are not applicable retrospectively. Petitioner's father has sufficient agriculture land in his name for cultivation. The case of the petitioner is also supported by the Sarpanch and Panches of Gram Panchayt of Nuna Majra (Jhajjar). Hence this petition.

Respondents have contested the present petition by filing the reply pleading *inter-alia* that besides the case FIR No. 282 of 1997, the petitioner was also convicted in two other cases i.e. FIR No. 307 dated 14.06.2006, under Sections 394, 397, 34, Police Station Sadar Fatehabad and case FIR No. 4 of 2006, under Section 302, 201 of IPC, Police Station Neemkathana (Rajasthan). It is further pleaded that the petitioner falls under the category of “hardcore prisoner” as per Section 2 (aa) of the Act. Hence, he is not entitled to be released on agro-parole.

It is further pleaded that he has also not completed five years terms in jail. He may be entitled for temporary release/furlough on completion of five years of sentence on or after 14.03.2016 as per Section 2(2) of the Haryana Good Conduct Prisoners (Temporary Release

Amendment Act) 2014. Respondents pleaded for dismissal of the petition.

I have heard Mr. A.S.Trikha, Advocate learned counsel for the petitioner, Mr. R.S.Doan, learned State counsel and have carefully gone through the record of the case.

Learned counsel for the petitioner contended that the concession of parole has been denied to the present petitioner on the ground that he falls in the category of the “Hardcore Prisoner”. He contended that Section 2 (aa) of the Act has been inserted vide Haryana Act No. 20 of 2012 and later on substituted vide Haryana Act no. 21 of 2013. This provision is not applicable retrospectively. So, the petitioner can not be denied the concession of parole on this ground. To support his contentions he relied upon case State of Haryana and others Vs. Jagdish, 2010(2) RCR(Criminal) 464. He contended that as per this judgment in order to consider the case for premature release the old policy shall be applicable then the same principle should apply for the temporary release on parole/furlough. Thus, he pleaded that the order declining the parole to the petitioner is illegal and suitable direction shall be given by the Court.

On the other hand, learned State counsel for the respondents contended that this fact is not disputed that petitioner falls in the category of “Hardcore Prisoner” and has been rightly declined by the Commissioner Rohtak, Division Rohtak.

I have duly considered the aforesaid contentions.

This fact is not disputed that present petitioner has been

convicted in three serious cases i.e. case FIR No. 282 dated 11.08.1997, under Sections 302/34 of IPC, Police Station Sadar Bahadurgarh and was sentenced to undergo life imprisonment, FIR No. 307 dated 14.06.2006, under Sections 394, 397, 34 IPC, Police Station Sadar Fatehabad and was sentenced to undergo ten years rigorous imprisonment, then in case FIR No. 4/06, under Sections 302, 201 IPC, Police Station Neemkathana (Rathasthan) and was sentenced to undergo life imprisonment in addition to the sentence of fine.

This fact has not been disputed at bar at the time of arguments that the petitioner falls in the category of “Hardcore Prisoner” as defined in Section 2(aa) of the Act. Learned counsel for the petitioner has only pleaded that this provision is not applicable retrospectively and has only been inserted vide Haryana Act no.20 of 2012 and was later on substituted vide Act no.21 of 2013. The case of temporary release can not be equated with premature release of a convict. The premature release relates to the substantive sentence awarded to the convict and he will be entitled to the benefits of the policy for premature release which was applicable on the date of his conviction. But, the temporary release of a prisoner on parole/furlough is only a temporary benefit available to the prisoner and the grant of said temporary release shall be governed by the prevalent provision of law/rules prevalent on the date when his case is considered for temporary release. It is not the case of the petitioner that his case for release on agricultural parole was moved before the insertion of Section 2(aa) of the Act.

Thus, as the petitioner falls in the category of “Hardcore

Prisoner”, so I do not find any illegality in the action of the respondents declining the benefit of the agricultural parole to the petitioner.

Consequently, the present petition has no merits and the same is hereby dismissed.

08.05.2015

s.khan

**(DARSHAN SINGH)
JUDGE**