

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Writ Petition No. 1177 of 2015 (O&M)
Date of decision : 08.12.2015**

Sanjay

..... Petitioner

versus

State of Haryana & Ors.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by: Mr. V.S. Rana, Advocate
for the petitioner.**

Mr. D.K. Grewal, DAG Haryana.

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ANITA CHAUDHRY, J.

The petitioner is undergoing ten year's imprisonment in Central Jail, Hisar for committing offence under Sections 363, 366 and 376(2)(g) IPC, Police Station Bhuna. He was convicted on 05.06.2012. His appeal is said to have been dismissed by this Court.

He sought temporary release on parole to carry out agricultural pursuits vide application, Annexure P-1. It was his case that there is no one in the family for this task and the family is totally dependent upon him. His grievance is that the authorities were not forwarding the case on the ground that after the amendment in Haryana Good Conduct Prisoners (Temporary Release) Act, the petitioner's case falls within the definition of "hardcore prisoner" as he was convicted for committing rape with

a girl below 16 years of age. The submission on behalf of the petitioner is that the amendment was carried out in 2012 in the principal act after the conviction and it cannot apply retrospectively. Reliance was placed on the decision rendered a Division Bench of this Court in **Sonu @ Arun Vs. State of Haryana**, CRWP No. 1078 of 2014, decided on 09.02.2015 and by a Single Bench in Crl. Writ Petition No. 1111 of 2014, decided on 26.02.2015, titled **Rajesh Vs. State of Haryana & Ors.**

State has filed the reply controverting the averments made in the petition. It was averred that parole cannot be claimed as a matter of right and the petitioner falls within the definition of hardcore prisoner as per Amendment Act 2012 and 2013, which puts a bar on release of hardcore prisoner on parole, except for the exigencies incorporated vide Section 5-A of the principal Act viz. to attend the marriage of his grand child or sibling, or death of his grand parent, grand parent-in-laws, parents, parent-in-laws, spouse, child or grand child, but there is no mention of release of hardcore prisoner on agricultural parole. It was further averred that this Court in the case of **Ajay Jadeja @ Janak Vs. State of Haryana & Ors.** CRWP No. 2104 of 2012, decided on 14.12.2012 had clarified that the amendments carried out vide Amendment Acts, 2012 and 2013 would operate retrospectively and no concession of temporary release can be granted merely because the prisoner was convicted prior to amendment in principal act.

I have heard learned counsel for the parties and have perused the paper-book.

The issue involved in the instant writ petition is that, whether the amendments carried out in 2012 and thereafter would apply to the petitioner. The issue is no more *res integra*. This Court recently in the case of Sonu (supra) had the occasion to deal with the definition of "hardcore prisoner" as incorporated in Section 2(aa) vide Amendment Act 2012 and while relying upon the law laid down by Hon'ble Apex Court in **Harjit Singh Vs. State of Punjab**, 2011(4) SCC 441, held that the provision providing for enhancing the sentence does not operate retrospectively. Relying upon Sonu's case, this Court in Rajesh case (supra) held as under:-

"8. *The only controversy in the present lis is which rule will be applicable to the convict i.e. whether the rule prevailing at the time of conviction or at the time of undergoing the sentence. In authority Sonu @ Arun case (supra) laid down by Division Bench of this Court and in authority Jaivir Singh's case (supra) laid down by Single Bench of this Court, held that rule applicable at the time of conviction should be made applicable to the petitioner regarding grant of parole.*"

In Ajay Jadeja's case, which was decided in 2012, the fact which weighed in the mind of Division Bench was that the prisoner was involved in many serious crimes and it was held that liberal approach could not be adopted. The later judgment takes a contrary view. In the instant case, the reply filed by the State reflects that the conduct of the petitioner in jail has remained

satisfactory. The petitioner was convicted on 05.06.2012 and the amendments in the principal Act came to be passed on 01.10.2012 and subsequently thereafter and thus, not applicable to the case of the petitioner.

For the aforesaid reasons, the instant petition is allowed. Directions are issued to the Competent Authority i.e. the Superintendent, Central Jail-I, Hisar to re-consider the prayer raised on behalf of the petitioner seeking agricultural parole after verifying the need and genuineness of the prayer made by him, but without resorting to amendments carried out subsequently after 2012 in the principal Act.

December 08,2015
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(ANITA CHAUDHRY)
JUDGE