

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

**CRWP No. 145 of 2015
Date of Decision: 7.5.2015**

Manoj

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Varinder Singh Rana, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (ORAL)

Present criminal writ petition is directed against the order dated 8.1.2015 passed by the Commissioner, Ambala Division, Ambala (Annexure P-1), whereby application of the petitioner for grant of parole, was dismissed.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 29.4.2015 was filed on behalf of the respondents.

Learned counsel for the petitioner submits that respondent

No.2 has proceeded on a misconceived approach, while passing the impugned order. Petitioner was entitled for the benefit of parole. Petitioner was wrongly categorized as hardcore prisoner. The impugned order passed by respondent No.2 suffers from arbitrariness. Referring to the amendments vide notification Annexure P-2 and P-3, learned counsel for the petitioner submits that it will operate only prospectively. Placing reliance on the interim order dated 5.12.2013 passed by a Division Bench of this Court in **CWP No. 15333 of 2013 (People's Union for Civil Liberties Vs. State of Haryana and another)** (Annexure P-4) as well as final order dated 22.3.2014 (Annexure P-5) passed by a Division Bench of this Court in the same very case, learned counsel for the petitioner submits that since there was nothing substantial against the petitioner, he was entitled for the benefit of parole. He also places reliance on order dated 9.1.2015 passed by this Court in CRWP No. 793 of 2014 (Jaivir Singh Vs. State of Haryana and others) Annexure P-8, order dated 9.2.2015 passed in CRWP No. 1078 of 2014 (Sonu @ Arun Vs. State of Hayana and others), order dated 8.4.2015 passed by this Court in CRWP No. 1741 of 2014 (Ajay Jadeja @ Janak Vs. State of Haryana and others), order dated 28.1.2015 passed in CRWP No. 1437 of 2014 (Yogender Vs. State of Haryana and another) to contend that petitioner is also entitled for parole. He prays for allowing the present petition.

On the other hand, learned counsel for the State, while referring to the impugned order, submits that the same was factually correct and legally justified, which deserves to be upheld. He further

submits that the impugned order was not suffering from any arbitrariness, as wrongly alleged by the learned counsel for the petitioner. He next contended that since the petitioner has misused the concession of parole two times, coupled with the fact that a mobile phone was recovered from him inside the jail, he is not entitled for parole. He prays for dismissal of the petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India, for the following more than one reasons.

A bare perusal of the impugned order would show that it is a self contained and speaking order. It is not even the argued case on behalf of the petitioner that respondent No.2 has passed a non speaking or cryptic order. It is pertinent to note here that petitioner was earlier granted parole from 19.10.1998 to 3.11.1998 for two weeks, but he absconded from parole and was at large for as long period as for 5 years and 11 months. He never surrendered but was arrested by the police on 3.9.2004.

Petitioner was again released on parole from 5.4.2006 to 4.5.2006, but he again absconded and was at large for 3 years, 11 months and 8 days. This time, police again arrested him on 13.4.2010. Besides this, Superintendent of Police, Ambala, vide his

order dated 9.9.2014 reported that convict comes under the category of 'hardcore prisoner', having found mobile in his possession inside the jail. Taking all these aspects in consideration, respondent No.2 passed the impugned order which deserves to be upheld.

Reading of the impugned order would also show that District Magistrate, Bhiwani, vide his letter dated 5.1.2015 reported that convict was not entitled for parole. It was found that convict does not own any land in his name. In fact, the land was owned by his father and he was alive. Similarly, Assistant District Attorney also pointed out that the petitioner was not entitled for parole, in view of the relevant provisions of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014.

Relevant operative part of the impugned order dated 8.1.2015, reads as under:-

"I after considering the report of District Magistrate Bhiwani and Assistant District Attorney and after considering the facts on the file found that earlier to this convict was granted parole from 19.10.1998 to 3.11.1998 for two weeks and he absconded from parole for 5 years and 11 months and on 3.9.2004 the police after great efforts arrested the convict. Second time convict was released on parole for 4 weeks on 5.4.2006 to 4.5.2006 and he absconded from parole for 3 years 11 months and 8 days again. On 13.4.2010 police after arresting the convict put him in jail. Apart from this Superintendent Central Jail Ambala, vide his report dated 9.9.2014 stated that convict comes under the category of hardcore prisoner having found mobile in his possession and according to

Section 2 aa (iv) of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013, prisoner is not entitled for parole 'who has been detected of using cell phone or in possession of cell phone/sim card inside the jail premises and Superintendent Central Jail, Ambala, vide his report dated 6.1.2015 informed that convict has completed 5 years of his sentence and convict has been provided minor and major punishment in that and the said conviction was judicially appraised by the District & Sessions Judge. Therefore, according to Section 5 A (2) of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2014 convict is not entitled for parole and therefore, considering the report of District Magistrate Bhiwani and according to above mentioned facts, application of the convict dated 1.9.2014 (Annexure P-1) for grant of agriculture parole is hereby rejected."

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, close perusal thereof would show that none of them is of any help to the petitioner, being distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The next argument raised by the learned counsel for the

petitioner about the prospectivity of amended provisions of law contained in notifications Annexures P-2 and P-3, has also been considered but the same has been found without any substance. It is so said, because no person has any vested or indefeasible right for release on parole. On the other hand, it is a concession which is granted to a prisoner, however, on fulfilling certain conditions. Petitioner was earlier released on parole twice over and every time, he misused the concession of parole, while absconding for about 6 years in the first instance and for about 4 years at the second time. It shows that the petitioner has no respect for the law and he takes the system for granted. The system cannot be made to suffer at the hands of unscrupulous and hardcore prisoners like the petitioner.

The abovesaid view taken by this Court also finds support from the judgment of this Court in Ajay Jadeja alias Janak Vs. State of Haryana and others decided on 14.12.2012. The relevant observations made by the Division Bench in para 11 of its judgment, which can be gainfully followed in the present case, read as under:-

"The test to determine whether a particular amendment would operate prospective or retrospective depends upon the question whether it affects vested right of a person. No prisoner has a vested right to get the benefit of temporary release on parole. It is a concession, which is given to a prisoner on fulfilling certain conditions. If on the date of making an application for grant of temporary release, a prisoner fulfills all the conditions applicable in his case, he can be considered for such concession for a limited period. The petitioner, being a hardcore prisoner is not entitled for the said

concession. He cannot be granted this concession merely because he was convicted prior to insertion of Section 5A in the Principal Act. In case of a hardcore prisoner, who is involved in many serious crimes, liberal approach cannot be adopted."

Reverting back to the facts and circumstances of the case in hand and respectfully following the law laid down by the Division Bench of this Court in Ajay Jadeja's case (supra), it is unhesitatingly held that the impugned order does not suffer from any arbitrariness, nor it is discriminatory. It is an administrative order, which is just and reasonable. No principle of natural justice has been violated by respondent No.2, while passing the impugned order and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance. Thus it must fail. No case for interference is made out.

Resultantly, with the abovesaid observations made, present criminal writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.5.2015
Ak Sharma