

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.32 of 2015

Date of Decision: January 13, 2015

Akhtar Hussain

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mohd. Arshad, Advocate for the petitioner.

Mr. Anil Mehta, Deputy Advocate General, Haryana
assisted by Warden Nafe Singh.

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh J.(Oral)

The petitioner has filed this writ petition for directing respondent No.3 to release him on emergency parole for four weeks for performing the marriage of his daughter, which is fixed for 21.01.2015.

It is stated that previously the petitioner had approached to this Court by filing CRWP No.1857 of 2014 on 06.12.2014 (Annexure P-5) seeking the release on emergency parole for four weeks. The said petition was disposed of by this Court vide order dated 12.12.2014 with a direction to the Superintendent of Jail, District Faridabad (Neemka), Haryana/respondent No.3 to decide the application of the petitioner within seven days from the date of receipt of certified copy of the said order.

In pursuant to the direction issued by this Court, the Superintendent of Jail had passed the impugned order dated 19.12.2014 (Annexure P-6), whereby the emergency parole of the petitioner has been declined on the ground that as per Section 2(aa) (i)(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, the petitioner, who has been convicted for dacoity under Sections 395, 396 or 397 of the Indian Penal Code, 1860, falls within the category of 'Hardcore Prisoner'. As per Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, the petitioner is not entitled to parole.

The said order has been challenged in the present writ petition. The reply of the State has been obtained.

The State has taken the stand that the petitioner falls within the category of 'Hardcore Prisoner' and is not entitled to parole under Section 5A of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014. Section 5A of the Amended Act, 2014 has been reproduced.

It is further stated that the factum of the marriage has been verified. It was stated that if the facts are found true, then the petitioner be sent in police custody to attend the marriage of his daughter.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014 is reproduced as under:

“Special Provision for hardcore prisoner- Notwithstanding anything contained in Section 3 and 4, no hardcore prisoners shall be entitled to temporary release or furlough.

Provided that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for a period of ninety-six hours to be decided by the concerned Superintendent Jail and intimation in this regard with full particulars of hardcore prisoner being released, shall be sent to the concerned District Magistrate and Superintendent of Police within twenty four hours.”

The proviso to the said Section shows that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for a period of ninety-six hours to be decided by the concerned Superintendent Jail and intimation with full particulars of hardcore prisoner being released shall be sent to the concerned District Magistrate and Superintendent of Police within twenty-four hours. It shows that even a hardcore prisoner can be released on emergency parole for a period of ninety-six hours to attend the marriage of his daughter.

It being so, the impugned order dated 19.12.2014 (Annexure P-6) passed by Superintendent Jail, is not sustainable in

the eye of law, is set aside to the extent that the petitioner is entitled to the benefit of proviso of Section 5A of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014.

As such, the present writ petition is allowed. The petitioner is ordered to be released on emergency parole for four days i.e. from 19.01.2015 to 22.01.2015 to enable him to attend the marriage of his daughter, fixed for 21.01.2015. The Superintendent Jail shall also send the intimation to the concerned District Magistrate and the Superintendent of Police, immediately, on the release of the petitioner. The petitioner shall be released on his executing personal and surety bonds to the satisfaction of the concerned District Magistrate, subject to the conditions as may be imposed. He will surrender back on jail on 23.01.2015 before noon.

January 13, 2015
sarita

(KULDIP SINGH)
JUDGE