

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

**Crl. Writ Petition No. 343 of 2015 (O&M)
Date of decision : 07.07.2015**

Mukesh

..... Petitioner

versus

State of Haryana & Ors.

... Respondents

CORAM:- HON'BLE MS. 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. Rajiv Dhawan, Advocate
for the petitioner.**

Mr. Gurdas Singh Salwara, DAG Haryana.

--

ANITA CHAUDHRY, J.

The petitioner is undergoing life imprisonment in District Prison, Karnal, in FIR No.83 dated 01.04.2004, under Sections 460 read with Section 34 IPC awarded vide judgment dated 21.02.2009 and another sentence of rigorous imprisonment for seven years awarded on 02.09.2008 in FIR No.138 dated 09.04.2004, under Sections 395 and 397 IPC, relating to different police stations of Panipat District.

He filed an application for grant of parole for four weeks in order to get his children admitted in school. His prayer was declined by the Competent Authority on 07.06.2014.

The reasons which weighed in the mind of the Competent Authority while declining the prayer of the petitioner, were (i) he committed jail offence by overstaying parole for one

day and (ii) he falls within the definition of "hardcore prisoner" as was convicted under Sections 395, 397 and 460 IPC, as per Clause (aa)(i)(2) inserted in The Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013(for brevity, 2013 Amendment Act)

It is not in dispute that for overstay, the petitioner was awarded punishment of forfeiture of two days earned remission, which was got judicially appraised by the Sessions Judge and was reduced to forfeiture of one day earned remission. It is also not disputed that after the jail offence, the petitioner was granted parole from 04.04.2012 to 03.05.2012. It is not the case of the respondents that he misused the concession that time. Thus, this ground is no more available to the authorities for declining the relief to the petitioner.

It has also come on record that the petitioner was sentenced in both the cases much after to the enactment of 2013 Amendment Act. An attempt has been made to give retrospective effect to the provisions contained in 2013 Amendment Act, which is not permissible under law. The amended provision would come into operation prospectively and not retrospectively, as held by this Court in **Jaivir Singh Vs. State of Haryana & Ors., CRWP No. 793 of 2014, decided on 09.01.2015.**

Section 3 of the Act stipulates temporary release of prisoners on certain grounds, viz. serious illness of prisoner or serious illness or death of prisoner's family, or marriage of the prisoner himself or close relative, for ploughing, sowing or

harvesting or carrying any agricultural pursuits. An exception clause 3(d) has been inserted for the authorities to consider the temporary release where sufficient cause was shown to do so.

The petitioner is seeking parole for getting his children admitted. Additional affidavit has been filed by the petitioner giving the names, age of his children and the school in which they are studying. But no information about the classes in which they are studying, has been provided.

For the aforesaid reasons, the instant petition is partly allowed. Impugned order dated 07.06.2014 (Annexure P-1) is set aside being not legally sustainable. Directions are issued to the Competent Authority i.e. the Superintendent, District Prison, Karnal to re-consider the prayer raised on behalf of the petitioner seeking parole after verifying the need and genuineness of the prayer made by him, but without adverting to the past conduct of the petitioner or resorting to 2013 Amendment Act.

A fresh order be passed within a period of one week of receipt of copy of this order.

July 07,2015
Jiten

(ANITA CHAUDHRY)
JUDGE