

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

CRWP No.427 of 2015

Date of Decision: 14.07.2015

Jagpreet Singh @ Preet

..... Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. R.K.Bagga, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

S.S.Saron, J.

Learned counsel for the State has filed reply of Sh. Surinder Pal Chauhan, Superintendent, District Jail, Yamunanagar on behalf of respondents No.1 to 4. The same is taken on record.

Heard learned counsel for the parties.

The petitioner seeks directions from this Court to the respondents to decide his application for grant of agriculture parole within a reasonable period of time preferably within a period of four weeks, besides, to release him on parole for six weeks so as to carry out necessary agriculture work.

The petitioner has been sentenced to undergo life imprisonment in case FIR No.40 dated 10.02.2011 registered at Police Station Mahesh Nagar, District Ambala for the offences punishable under Sections 148, 149, 323, 506 and 302 Indian Penal Code ('IPC' for short). Against the said conviction and sentence, the petitioner has filed CRA-D-1585-DB of 2013 in this Court, which is pending.

The petitioner while undergoing his imprisonment applied for agriculture parole to the Superintendent, District Jail, Yamuna Nagar (respondent No.3). According to the petitioner, the Superintendent, District Jail, Yamuna Nagar did not accept his application for agriculture parole on the ground that when the petitioner was under-trial prisoner, a mobile phone was recovered from him. Therefore, he fell within the category of 'hard core prisoner' as defined under Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 ('Amendment Act' – for short). It is submitted that the petitioner is facing trial for the alleged recovery of mobile phone and he is on bail in that case. Copy of the application for parole has been attached as Annexure A-1.

In the reply that has been filed, it is stated that the State Government has framed the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' for short) to provide for temporary release to the convicts on parole for

their good conduct on certain conditions. Benefit of parole/furlough, it is submitted, is only a concession given by the State Government and a prisoner cannot claim it as a matter of right. It is submitted that the petitioner in fact had never submitted any representation for agriculture parole in the office of the Superintendent, District Jail, Yamuna Nagar (respondent No.3). If the petitioner had applied for parole, the same would have been decided within the time frame as per his eligibility prescribed under the Act and the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. It is further submitted that the petitioner is not entitled for parole as he is 'hard core prisoner', as a mobile phone was recovered from the petitioner during his confinement in Central Jail, Ambala and a case has been registered against him at Police Station Baldev Nagar, Ambala which is pending. It is submitted that Section 2 (aa) (iv) of the Amendment Act envisages that a 'hard core prisoner' means a prisoner who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises.

Learned counsel for the petitioner contends that cell phone that was recovered from the petitioner was recovered while he was under-trial prisoner in the case and he has been convicted on 16.11.2013. The recovery of cell phone, it is submitted, was on 13.03.2012 and the Amendment Act came into force on 03.10.2013 and, therefore, the same would not

be applicable retrospectively. Learned counsel for the petitioner cites 'Varinder Singh v. State of Punjab and another' 2014 (1) R.C.R. (Criminal) 663 (SC) in support of his contention.

In response, learned counsel for the State has submitted that no representation has been filed by the petitioner in the office of the Superintendent, District Jail, Yamuna Nagar (respondent No.3) and had a representation been filed, the same would have been considered in accordance with law. It is submitted that the question regarding the petitioner being in possession of a mobile phone, is pending consideration before the trial Court.

We have given our thoughtful consideration to the matter.

In Varinder Singh's case (supra), the Hon'ble Supreme Court inter alia held that the alleged offence in the case was committed in 2009 when carrying of a mobile phone in the jail premises was not an offence under the provisions of Section 52-A of the Prisons (Punjab Amendment) Bill, 2011. The said provision made the possession of a mobile phone by a prisoner and supplying the phone by any person an offence. The notification issued by the Punjab Government bringing this Section in force was dated 08.03.2011. The FIR for the offence was dated 24.09.2009.

The said notification, it was held, would obviously not apply as

the alleged offence was committed in 2009, and retrospective effect would not apply in criminal law. Therefore, no offence was held to be made out. It was held that the said Section would not apply to the facts of the said case.

In the present case, the Amendment Act came into force on 03.10.2013. Section 2 (aa) (iv) of the Act defines a 'hard core prisoner' who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises. The said Amendment Act had, therefore, indeed was not in force on the date of incident which had occurred on 13.03.2012. Therefore, the petitioner cannot be held to be a 'hard core prisoner' and the provisions of the Amendment Act would have to be applied prospectively as held in Varinder Singh's case (supra)

In the case of Harjit Singh v. State of Punjab (2011) 4 SCC 441, it was held that it is a settled legal proposition that a penal provision providing for enhancing the sentence does not operate retrospectively.

In the present case, the provisions which declare a prisoner to be a 'hard core prisoner' for carrying a mobile phone for using and possessing a cell phone/SIM card inside the jail premises had come into force on 03.10.2013, whereas the possession of a mobile phone in the jail premises was not an offence and neither was a prisoner liable to be declared a 'hard core prisoner' on the date the petitioner is said to be

using and possessing the mobile phone i.e. on 13.03.2012. Therefore, the petitioner cannot be treated as a 'hard core prisoner' for the act he is said to have committed before the Amendment Act came into force.

The petitioner, however, has not made any representation before the jail authorities. It would, therefore, be desirable for the petitioner in the first instance to make a representation for his temporary release before the jail authorities and if such a representation is made, the same shall be decided by the respondents No.2 to 4 as expeditiously as possible and in accordance with the guidelines framed by the State Government for treating such applications.

The criminal writ petition accordingly is disposed of.

(S.S. SARON)
JUDGE

14.07.2015
'yogesh'

(RAMENDRA JAIN)
JUDGE

Note: Whether to be referred to reporter : Yes