

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Writ Petition No.614 of 2015

Date of Decision : July 30,2015

Sunil

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. V.S. Rana, Advocate.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The petitioner, who stands convicted and sentenced under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 420 IPC and undergoing imprisonment for ten years has filed the present writ petition under Article 226 of the Constitution of India with a prayer that the order dated 11.4.2015 (Annexure P-1) passed by the Superintendent, District Jail, Jind rejecting his application for grant of house repair parole be set aside.

According to the petitioner, he has challenged his aforementioned conviction and sentence by filing an appeal which stands admitted in this Court. During his stay in jail, he has maintained good conduct and given no chance of any

complaint. He applied for house repair parole before the jail authorities which application was supported by the Gram Panchayat that the house of the petitioner needed repairs as its condition was deplorable. The father of the petitioner had already died and the petitioner had been living with his mother in the said house. There is no other family member who could undertake the necessary repairs. However, his application for house repair parole has been rejected by the Jail Superintendent on the ground that he is a hardcore prisoner and mobile phone was found in his possession on 5.12.2013. It is also his case that regarding alleged detection of mobile phone, FIR No.537 dated 5.12.2013 under Section 42 of the Prisons Act stands registered at Police Station City, Jind. The trial of the said case is going on and the petitioner is on bail. Merely because the petitioner was found in possession of a mobile phone is no ground to reject his application for house repair parole as at the trial of the said case, the petitioner could be either convicted or sentenced. Rejection of his application for release on parole on the ground of his involvement in a case for possessing mobile phone amounts to punishing him twice over and, therefore, a violation of Articles 14 and 20 of the Constitution.

Upon notice, reply by way of affidavit of the Jail Superintendent has been filed on behalf of the respondents. It has been mentioned therein that the petitioner submitted the application for four weeks' house repair parole on 9.4.2015.

Accordingly, record of the petitioner was seen by the Jail Superintendent and it was found that the category of the petitioner comes under the Haryana Good Conduct Prisons (Temporary Release) Act, 1988 and amended notification dated 1.10.2012 besides Rule 2(aa)(iv) and Rule 2(2) of the Haryana Government notification dated 31.3.2014 and, thus, the case of the petitioner for grant of four weeks' house repair parole would be considered after five years of his conviction. It has also been mentioned that during search of the petitioner, as one cell phone was found in his possession, FIR No.537 dated 5.12.2013 under Section 42 of the Prisons Act was registered at Police Station City, Jind, which is pending before the trial Court. In this way, the petitioner by possessing a mobile cell phone inside the jail, falls under the category of 'hardcore prisoner'. After considering all the facts, the legislature had made the new amendment for parole jumpers and cell phone users by making separate category of hardcore prisoner. Therefore, the petitioner is not entitled for the concession of parole, more so, when it is not as a matter of right. It is a conditional concession given by the legislature subject to the good conduct of the convict inside the jail. The petitioner is also not entitled to the benefit of Article 20 of the Constitution as the amendment made by the legislature has been made applicable prospectively. The petitioner committed the offence after the amendment in the Act of 1988 and, thus, cannot be heard saying that he is facing double

jeopardy, one by facing the trial for the offence under Section 42 of the Prisons Act and second being denied release on parole for house repair.

It is also the stand of the respondents in their reply that apart from being involved in FIR No.148 dated 18.10.2011 under Section 15 of the NDPS Act read with Section 420 IPC registered at Police Station Uchhana and FIR No.537 dated 5.12.2013 under Section 42 of the Prisons Act, Police Station City, Jind, the petitioner was involved in three more criminal cases, i.e. FIR No.1172 dated 31.12.2009 under Section 379 IPC, Police Station Sadar, Hisar (acquitted); FIR No. 35 dated 13.1.2010 under Sections 457/380 IPC, Police Station Sadar, Hisar (acquitted); and FIR No.81 dated 10.6.2010 under Section 15 of the NDPS Act, Police Station Sadar, Sangrur in which he stood convicted and sentenced for three months rigorous imprisonment with fine of Rs.2,000/-.

Learned counsel for the petitioner has submitted that once the petitioner is being tried for the charge under Section 42 of the Prisons Act, the denial of release on parole on that ground would amount to double jeopardy and, thus, hit by Article 20 of the Constitution. In this regard, he has referred to the order dated 28.1.2014 (Annexure P-2) passed in Criminal Writ Petition No. 1785 of 2013 Harjinder @ Bittu Vs. State of Haryana and others.

Admittedly, the trial of the case under Section 42 of the Prisons Act has not concluded whereas in the case of Harjinder @ Bittu (*supra*) the trial had already concluded. Moreover, the denial of release on parole is not a punishment but only a restriction which can be lawfully imposed. Thus, it cannot be said that the denial of release on parole on the ground that the petitioner is facing trial for committing the offence punishable under Section 42 of the Prisons Act violates Article 20 of the Constitution as it amounts to double jeopardy.

Taking into consideration the totality of the circumstances, including the past conduct of the petitioner, this Court is of the considered view that the application filed by the petitioner for house repair parole has been rightly rejected by the Jail Superintendent, Jind.

The petition is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 30, 2015
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