

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

Crl. Writ Petition 1154 of 2015
Date of Decision : February 17, 2016

Shiv Kumar

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present : Mr. Akshay Jain, Advocate
for the petitioner.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

Prayer made in the petition filed under Article 226 of the Constitution of India is for issuance of directions to the respondents to release the petitioner on parole for a period of six weeks on account of ill-health of his wife.

The petitioner stands convicted in FIR No. 219 dated 18.4.2009 registered at Police Station, City Thanesar, under Sections 302, 394, 397, 324/34 IPC and Section 25 of the Arms Act and sentenced to undergo imprisonment for life. Aggrieved of his conviction and sentence, the petitioner has filed Crl. Appeal D-437-DB of 2012 which was admitted on 11.5.2015. However,

the application filed by him for suspension of his sentence of imprisonment was declined. At the same time, a direction was issued to the Registry to complete the records and post the appeal for final hearing within one year.

According to the petitioner, his wife Smt. Geeta is suffering from various ailments and undergoing treatment from General Hospital, Kurukshetra. While referring to the medical record (Annexure P-1), the petitioner has pleaded that his wife is a patient of hypertension with history of breathlessness on exertion. She is also suffering from psychiatric illness and for all these diseases she is on medication. Besides, she is also suffering from Cholelithiasis (Gallstones) and, accordingly, on 15.7.2015 she was referred to Government Medical College and Hospital, Sector-32, Chandigarh for further investigation and treatment including surgical intervention for removal of the gall bladder. According to the petitioner, there is no other adult male/female member in his family who can look after the interest of his wife. Besides the wife of the petitioner, there are three other minor children including two girls to be looked after. The presence of the petitioner is required for looking after his wife in case of any surgical intervention. According to the petitioner, he moved an application to the Jail Superintendent on 29.7.2015 with a request for releasing him on parole for a period of six

weeks in view of the medical exigencies of his wife and alongwith the said application, he appended all the relevant records. However, the Jail Superintendent bluntly refused to entertain the application on the ground that the petitioner had been put in the category of hardcore prisoner as provided under Section 2(aa) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013. Prayer has, accordingly, been made for issuance of directions to the respondents to release the petitioner on parole.

Upon notice, learned State counsel had put in appearance and filed the reply. It was stated therein that the petitioner neither submitted any application for granting emergency parole nor any medical record about the problem of his wife ever produced before the authorities.

Despite the above, this Court on the last date of hearing directed the Jail Superintendent to entertain the application dated 28.7.2015 already brought on record as Annexure P-2 and to take conscious decision on the same.

Learned State counsel has placed on record the affidavit of the Jail Superintendent. Alongwith the same, copy of speaking order dated 15.2.2016 passed by the Jail Superintendent, Kurukshetra has been appended wherein it is mentioned that the parole case of the petitioner on medical

ground of his wife was considered and rejected for the reason that the convict stood convicted of dacoity (under Section 397 IPC) and, therefore, falls under the category of hardcore prisoners as per clause 2(aa)(i)(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2013 and also charged for using a cell phone in the jail premises. As such, he is not entitled for any parole for next five years from the date of his conviction as per sub-section 2 of Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2015.

The petitioner was convicted and sentenced on 13/15.12.2011. Amongst other offences, he was convicted under Section 397 IPC and, therefore, in terms of Section 2(aa)(i)(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2013 his case would fall under the category of hardcore prisoners. Further, he has also been charged for using cell phone inside the jail premises on 7.11.2013 and FIR No. 905 dated 7.11.2013 under Section 42 of HGCP Act, Police Station City Thanesar, was registered against him. In that case, he was convicted on 8.9.2014 and sentenced to the period already undergone by him. Under Section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2015, a hardcore prisoner would become entitled for temporary release or furlough only after he completes five years imprisonment and has not been

awarded any major punishment by the Jail Superintendent, as judicially appraised by the District and Sessions Judge. However, the five years imprisonment period would not include imprisonment during trial period for more than two years, while counting five years of imprisonment.

In view of the above, no case is made out for issuance of directions to the respondents to release the petitioner on parole on account of ill-health of his wife.

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

**(T.P.S. MANN)
JUDGE**

February 17, 2016
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**(RAMENDRA JAIN)
JUDGE**