

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

CRWP-1205-2015

Date of decision: 29.02.2016

Rafiq

.....Petitioner

versus

The State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.A.S.Trikha, Advocate for the petitioner
Mr.Maheshinder Singh Sidhu, Addl.A.G. Haryana

- 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?*

Kuldeep Singh, J. (Oral)

Reply filed on behalf of respondent Nos.1 to 3 in Court is taken on record.

The petitioner is aggrieved by the order 19.12.2014 (Annexure P1), passed by the Commissioner, Rohtak, vide which, the order of the Superintendent, District Jail, Gurgaon declining parole to the petitioner for 15 days was upheld and parole case of the petitioner was not recommended. Such order was passed after considering the order passed by this Court in Civil Writ Petition No.177 of 2014.

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

Today, a copy of the judgment dated 17.8.2007 passed by learned Additional Sessions Judge, Faridabad has been produced which shows that the present petitioner was convicted for rape-cum-

murder of a minor.

In the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 (in short, 'the Act'), hardcore prisoner is defined in Section 2(aa). Clause (i) of Section 2(aa) of the Act is reproduced as under:-

“(i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt in murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify.”

Clause (iv) of Section 2(aa) of the Act is also reproduced as under:-

“(iv) has been detected of using cell phone or in possession of cell phone/ SIM card inside the jail premises.”

Therefore, a person, who is convicted of rape-cum-murder as well as found in possession of cell phone/ SIM card inside the jail premises is termed as hardcore prisoner. The parole was declined on the ground that the petitioner was found in possession of mobile phone /sim in jail premises. Leaving aside the fact that the matter regarding possession of mobile phone stood finally decided, the fact remains that the petitioner is covered under clause (i) of Section 2 (aa) of the Act. He was convicted of rape-cum-murder of minor. Therefore, he falls under the definition of hardcore prisoner.

Amended Section 5A of the Act is reproduced as under:-

***“5-A. Special Provisions for hardcore prisoners-
Notwithstanding anything contained in Sections 3 and 4, a***

hardcore prisoner shall not be released on temporary basis or on furlough:

Provided that a hardcore prisoner may be allowed to attend the marriage of his child, grand child or sibling; or death of his grant parent, parent, grant parent in-laws, parent-in-laws, sibling, spouse or child, under the armed police escord for a period of forty eight 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.”

Therefore, above mentioned Sections make it evident that a hardcore prisoner is not to be granted benefit of parole except on the grounds mentioned therein. The agricultural parole is not one of the grounds mentioned in the said section.

In view of the matter, though for different reasoning, I do not find any illegality or infirmity in the impugned order 19.12.2014 (Annexure P1), passed by the Commissioner, Rohtak.

Accordingly, the present petition is dismissed.

29.02.2016
gk

(Kuldip Singh)
Judge