

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

Criminal Writ Petition No. 1299 of 2015 (O&M)

Date of decision: September 27, 2016

Sunil @ Shilu

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. A.S.Trikha, Advocate
for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

S.S. SARON, J.

The petitioner has been convicted by the learned Additional Sessions Judge, Sonipat vide order dated 15.07.2014 in case FIR No. 140 dated 17.06.2011 registered at Police Station Sadar Sonipat for the offences under Sections 148, 149, 302 and 307 Indian Penal Code ('IPC' - for short), besides, Section 25 of the Arms Act.

The petitioner was sentenced to life imprisonment in the aforesaid case. While undergoing his imprisonment, he sought temporary release on parole for carrying out agricultural operations in terms of Section 3 (1) (c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short - 'the Act'). According to the petitioner, he has sufficient agricultural land in his share as per the

‘Jamabandi’ (Annexure P2).

Reply has been filed by way of affidavit of Sh. Jai Kishan Chhillar, Superintendent Jail, District Jail, Sonipat on behalf of respondents No.1 to 3. Along with the reply, copy of order dated 24.08.2015 (Annexure R-1) has been submitted. In terms of reply and the said order (Annexure R-1), it is stated that the parole case of the petitioner cannot be initiated as the petitioner is facing trial in case FIR No. 293 of 2012 registered at Police Station City Sonipat for which he has been charge sheeted for the offences under Sections 120-B and 201 IPC, besides, Section 42 of the Prisons Act, 1894. It is submitted that in terms of Section 2 (aa) (iv) of the Act, the petitioner is a 'hard core prisoner' inasmuch as he was apprehended while using a mobile phone in the jail premises. It is also submitted that the petitioner had not been granted bail in the said case.

We have given our thoughtful consideration to the matter. A prisoner while undergoing imprisonment is entitled for consideration of his case for temporary release on parole in terms of Section 3(1) of the Act. Section 3 (1) (c) of the Act envisages that the State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner.

According to the 'Jamabandi' (Annexure P-2), the father of the petitioner namely Karambir Singh, besides, Randhir Singh, Kedar Singh, Sumer Singh sons of Kripa Ram are the owners to the extent of 1/4th share each of 2/3rd share in land measuring 176 kanal 11 marlas. Therefore, the father of the petitioner has agricultural land in the village, which is recorded in his possession. His father Karambir Singh, it is mentioned in the reply, submitted an application through registered post on 21.08.2015 stating that he was 59 years old and unable to do farming and no other person was available in the family to do farming; therefore, his son (petitioner) be allowed parole. He submitted necessary documents in this regard.

Section 2 (aa) of the Act defines 'hardcore prisoner'. Clause (iv) relates to a person detected with a cell phone etc. being termed as a 'hard core prisoner'. The said provision reads as under:-

2. Definitions.- In this Act, unless the context otherwise, requires,-

xxx xxx xxx

(aa) "hard core prisoner" means a person,-

xxx xxx xxx

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

The question, therefore, that requires consideration is, whether on mere detection of a cell phone can a prisoner be declined temporary release on parole or whether the same is subject to his guilt being established and proved and only in that eventuality the parole can

be declined.

During the course of hearing, learned counsel for the petitioner has submitted copy of the order dated 28.10.2015 passed by the learned Judicial Magistrate First Class, Sonipat in terms of which the petitioner - Sunil Kumar has been granted bail in the aforesaid case FIR No. 293 dated 11.06.2012 registered at Police Station City Sonipat for the offences under Sections 120-B and 201 IPC, besides, Section 42 of the Prisons Act. Therefore, the objection of the State that the prisoner had not been granted bail in the said case/FIR relating to detection of mobile phone no longer survives.

Section 42 is under Chapter X of the Prisons Act. It is under the heading 'Offences in Relation to Prisons'. Section 42 of the Prisons Act reads as under:-

“42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners. – Whoever, contrary to any rule under Section 59 introduces or removes or attempts by any means whatsoever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner, outside the limits of a prison any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such

rule, communicates or attempt to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.”

The petitioner is admittedly facing trial in the case under Section 42 of the Prisons Act as also under Sections 120-B and 201 IPC.

A presumption of innocence is available to such an accused like the petitioner who is facing trial in a case under Section 42 of the Prisons Act as also under Sections 120-B and 201 IPC. It is a fundamental principle of criminal jurisprudence that every person accused of an offence is presumed to be innocent unless he is proved guilty and convicted of the charges that are alleged against him. A right of a fair trial is available to a person under going imprisonment as well as an innocent person. An accused is to be presumed innocent until proved to be otherwise in a fairly conducted trial. Therefore, at this stage to decline temporary release on parole to the petitioner would amount to pre-judging the guilt of the petitioner, which is yet to be established and proved. It has still to be proved by the prosecution in the pending trial that a mobile phone had been detected from him. To hold that it had been detected would be quite iniquitous, besides, being improper. In other words, the guilt of the accused can only be said to be established on his conviction by a Court of competent jurisdiction and the same cannot be pre-judged on mere allegations of the charges that

have been framed.

Therefore, if a prisoner is not convicted of the said charges, he cannot be labelled as a 'hard core prisoner' within the meaning of Section 2 (aa) of the Act so as to disentitle him for consideration for temporary release on parole.

Keeping in view the aforesaid position, it would be just and expedient that the competent authority considers the agriculture parole case of the petitioner without the disability of his being termed as a 'hard core prisoner' as the charge in respect of detection of a mobile phone has not yet been proved and established.

In the circumstances, the writ petition is allowed and the competent authority/respondents shall consider the temporary release of the petitioner for agriculture parole in accordance with law and without him being labelled as a 'hard core prisoner' at least till his guilt is established. The exercise of consideration shall be carried out as expeditiously as possible and preferably within four weeks from the date of receipt of copy of this order.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

September 27, 2016
rts

Note:-1. Whether speaking/reasoned: Yes

2. Whether reportable: Yes