

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.1402 of 2015 (O&M)
Date of decision: February 19, 2016

Aftab Alam

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohammad Arshad, Advocate
 for the petitioner.

Mr.Himmat Singh, Deputy Advocate General, Haryana
 for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this criminal writ petition under Article 226 of the Constitution of India read with Section 3(1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 praying for setting aside the impugned order dated 17.09.2015 (Annexure P-1) and for issuance of directions to the respondents to release the petitioner on emergency parole forthwith for four weeks on the grounds of illness of his wife to arrangement necessary means for the operation.

It is stated in the petition that petitioner has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of ₹10,000/- and in default of payment of fine, to

further undergo rigorous imprisonment for a period of 2½ years under Sections 395/412 IPC and to undergo rigorous imprisonment for a period of seven years under Section 397 IPC and two years under Section 25 of the Arms Act in case FIR No.452/2010 under Sections 395, 397 and 412 IPC and Arms Act. The appeal filed by the petitioner was dismissed by this Court. It is also stated that petitioner is a married person, having a son namely Mohd. Khalid aged 7 years, who is studying in 2nd class. Father of the petitioner has already died. It is further stated in the petition that petitioner's wife has been suffering from Polycystic Ovarian disease and is continuously under the treatment of Adarsh Health Care, Badarpur, New Delhi and concerned doctor has advised for surgery.

Notice of motion was issued and learned State counsel appeared and contested the petition and also filed the reply.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

In the impugned order Annexure P-1, it is held that as per Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, being a hardcore prisoner, the convict is not entitled to parole or furlough. Section 5A provides that 'notwithstanding anything contained in sections 3 and 4, no hardcore prisoners shall be entitled to temporary release or furlough'. It is in the order that petitioner Aftab Alam has been convicted under Sections 395/397 IPC for committing dacoity. The case of the convict falls in the category of the hardcore prisoners.

Learned counsel for the petitioner has shown the notification of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, according to which sub-section (2) of Section 5A of the Act was substituted as under:-

“(2) Notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge:

Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

In the impugned order, this amendment has not been discussed and further nothing has been discussed as to how much period the petitioner has undergone as per this amendment.

In view of the above discussion, the impugned order (Annexure P-1) is not as per law and the same is set aside.

Therefore, finding merit in the present criminal writ petition, the same is allowed. The respondents are directed to re-consider the matter expeditiously as per above-said amendment, as per law.

February 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE