

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

CRWP No.1540 of 2015
Date of decision: 13th May, 2016

Balbir

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondents/State.

FATEH DEEP SINGH, J.

Petitioner Balbir who is presently confined in District Jail, Sonapat has invoked this constitutional remedy under Article 226 of the Constitution of India on the grounds that he was convicted in case FIR No.220 dated 09.10.1999 under Sections 302/323/506/34 IPC pertaining to Police Station Sonapat by the Court of learned Additional Sessions Judge, Sonapat vide judgment and order dated 13.07.2002 and was sentenced to undergo life imprisonment. It is his claim that he filed a criminal appeal bearing CRA-D No.533 of 2002 before this Court which was dismissed and during the pendency of which from 07.03.2009 till 01.10.2014 he remained on bail. It is by another quirk of fate the petitioner was involved in another case bearing FIR No.285 dated

17.08.1996 under Section 452 IPC and was convicted and sentenced vide judgment and order dated 13.03.2007 to undergo rigorous imprisonment for 3 years in which he was released on bail on 30.01.2008. Claiming that his case does not fall under the category of 'hardcore prisoners' and therefore had prayed for issuance of directions to the respondents to initiate action on his application dated 21.09.2015 for agro-parole having remained in jail for a sufficiently long period.

The State in its reply has taken a stand that undisputedly the petitioner is undergoing life imprisonment and having remained as an undertrial prisoner in this case from 23.10.1999 to 29.01.2000 and from 11.07.2002 to 12.07.2002 and upon conviction was lodged in jail as a convict from 13.07.2002 to 07.03.2009 and from 01.10.2014 till date. The State has sought to reiterate that during this period the petitioner has also been convicted for commission of offence under Sections 452/324/323/148 IPC in which case upon his release on bail on 30.01.2008 he was again admitted in jail on 24.08.2010 on dismissal of his appeal and thereafter was released on bail on 09.10.2010 and as on date vide release order No.2060 dated 09.10.2010 he was presently on bail in this case.

The stand of the State is emphatic to the effect that by virtue of Section 2(aa)(ii) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2012 and 2013 (in short, 'the Act'), the 'hardcore prisoner' has been defined as a person who during a period of

five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC except the offences covered under Clause (i) of Section 2(aa), committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months, provided that while counting the period of five years the period of actual imprisonment or detention shall be excluded.

Upon hearing arguments of the two sides, it is very much clear that upon first conviction of the petitioner he was sentenced to undergo life imprisonment on 11.07.2002/13.07.2002 and in the second case he was convicted to undergo imprisonment for a period of 3 years on 13.03.2007/16.03.2007 and thus, the period in-between these two convictions is less than five years as has been canvassed by learned State counsel and therefore, having been convicted twice within a period of five years his case stands covered under the provisions of Section 2(aa)(ii) of the Act and therefore, falls under the category of 'hardcore prisoners'.

Learned counsel for the petitioner could not put any resistance to the same and a speaking order has been passed by the Superintendent, District Jail, Sonapat which was communicated to the petitioner vide letter No.7930 dated 24.09.2015 and is placed on the record of this case as Annexures R1 & R1/T. Thus, in the light of the

same, the petitioner cannot be allowed any relief and there being no merit in his prayer the same is declined. Moreover, no vested right accrues to the petitioner for such a temporary release on parole and is rather to the mind of this Court a pure concession at the benevolence of the State subject to fulfillment of certain terms and conditions which the petitioner could not do so.

Thus, in the totality of what has been detailed and discussed above, the writ petition being wholly merit-less stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 13, 2016
rps