

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Writ Petition No.1747 of 2015

Date of Decision : January 20, 2016

Mandeep 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. Varinder Singh Rana, Advocate

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of directions to the respondents to grant him six weeks' agriculture parole.

The petitioner stood convicted in FIR No.87 dated 30.5.2011 under Section 302 read with Section 34 IPC registered at Police Station Badhra, District Bhiwani vide judgment and order dated 14.8.2013 passed by the trial Court and sentenced to undergo imprisonment for life.

According to the petitioner, his father had submitted an application to the Jail Superintendent, Bhiwani through registered post on 21.11.2015 for granting him six weeks' agriculture parole as he himself was handicapped person, whereas his another son is not in his control. Excepting the petitioner, there is no other able-bodied member in the family who could perform agricultural operations. Even the Gram Panchayat has recommended for releasing him on parole.

It is also the case of the petitioner that the jail authorities are not considering his case for parole on the ground that on 4.6.2013 one mobile phone was recovered from his possession and in that regard FIR No.388 dated 4.6.2013 under Section 42 of the Prisons Act stood registered against him at Police Station Sadar, Bhiwani. Accordingly, he had been categorized as 'Hardcore Prisoner' in view of the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 as amended by the Act of 2013. The amendment came into force on 3.10.2013 and as the mobile phone was recovered from him on 4.6.2013, i.e. prior to the amendment, therefore, the amended Act was not applicable in the case of the petitioner. Hence, the action of the authorities in not considering his case for release on parole is unsustainable in the eyes of law.

Upon notice, reply has been filed on behalf of the respondents, wherein it is stated that as the petitioner was detected using the cell phone on 4.6.2013 inside the jail premises and for this,

a case stood registered against him at Police Station Sadar, Bhiwani vide FIR No.388 dated 4.6.2013 under Section 42 of the Prisons Act, therefore, his case fell under the category of 'Hardcore Prisoner' and such a prisoner is entitled to be released on parole or furlough only after completing five years' imprisonment, including two years of under-trial period. He has undergone only four years, six months and twenty nine days' imprisonment as on 5.1.2016, including under-trial period of two years, two months and six days. As such, he has not completed five years' imprisonment, which shall not include imprisonment during trial period for more than two years. He falls short of the requisite period by seven months and seven days. Therefore, presently, he is not entitled to be released on parole as prayed for by him.

Having heard learned counsel for the parties and in view of the Division Bench judgment of this Court in the case of **Vakil Raj Vs. State of Haryana and others**, Criminal Writ Petition No.1840 of 2014, decided on 28.11.2014, wherein it was held that the amended definition of 'Hardcore Prisoner' would be applicable to all the convicts who were convicted prior to amendment and insertion of clause (aa) in Section 2 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2012, the jail authorities could lawfully treat the petitioner as a 'Hardcore Prisoner' and, thus, deny him the concession of release on parole. Moreover, grant of parole is only a

concession and not a right and, therefore, could be regulated. At the same time, the concession of parole is admissible to such a 'Hardcore Prisoner' only if he has already completed five years' imprisonment, including under-trial for a maximum of two years. As on 5.1.2016, the petitioner was falling short of the requisite period by seven months and seven days, therefore, no relief can be granted to him in the present petition.

Dismissed.

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

**(RAMENDRA JAIN)
JUDGE**

January 20, 2016
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