

In the High Court of Punjab and Haryana at Chandigarh

CrWP No.1342 of 2016

Date of decision: 18.11.2016

Jaibir Singh son of Sukhbir

.... Petitioner

Versus

State of Haryana & Ors.

.... Respondents

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mrs. Justice Lisa Gill.

Present: Mr. Vishal Nehra, Advocate for the petitioner.
Mr. R.K. Makkad, DAG, Haryana for the State.

S.S. Saron, J.

The learned Counsel for the State has filed reply by way of affidavit of Sh. Bhupinder Singh, Deputy Superintendent, Central Jail, Ambala on behalf of respondents No.2 and 3. The reply is taken on record.

Heard learned counsel for the parties.

The petitioner has filed the Crl. Writ petition under Section 482 of the Code of Criminal Procedure read with Section 3 (c) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' – for short) for grant of two months parole to him for making arrangements for the marriage of his sister which is to be solemnized on 25.11.2016 at Village Kawi, District Panipat.

The petitioner is undergoing life imprisonment in two separate cases i.e. FIR No.70 and FIR No.71 dated 2.12.2011 and 3.12.2011 respectively registered at Police Station GRP Chandigarh for the offences under Sections 302, 201 and 34 Indian Penal Code ("IPC" – for short). His life imprisonment commenced from 19.6.2014. At present he is

confined in Central Jail, Ambala. His appeals against the same are pending in this Court.

During incarceration of the petitioner in jail, he submitted a representation to the Superintendent Central Jail, Ambala for grant of two months' parole for making arrangements and doing other miscellaneous work for the marriage of his sister which is to be solemnized on 25.11.2016. The Superintendent Central Jail, Ambala (respondent No.2) has, however, vide order dated 19.9.2016 (Annexure P2) declined the parole. According to the petitioner, his behaviour in jail has been good and there was no such conduct which would warrant the parole to be declined.

In terms of the reply that has been filed, it is submitted that the petitioner has been convicted and sentenced by the learned Additional Sessions Judge, Ambala on 29.5.2014 for the offences under Sections 302, 201/34 IPC in case FIR No.70 dated 2.12.2011 registered at Police Station GRP Chandigarh. Besides, he has also been convicted and sentenced for the offences under Sections 302, 201/34 IPC in case FIR No.71 dated 3.12.2011 registered at Police Station GRP Chandigarh. He has been sentenced to undergo life imprisonment in both the cases; besides, pay a fine of Rs.3000/- and in default thereof, undergo simple imprisonment for four months. The petitioner is also involved in using a cell phone inside the jail premises. For the same, case FIR No.304 dated 26.3.2013 under Section 42 of the Prisons Act, 1894 and Section 120-B IPC has been registered. Therefore, it is submitted that the petitioner falls within the category of 'hardcore prisoner' as defined in Section 2 (aa) (i) (8) and (iv) of the Act. It is also submitted that the petitioner was involved in a quarrel with another prisoner on 2.12.2013. Judicial appraisal of the involvement of the petitioner in a quarrel was given by

the learned Sessions Judge, Ambala. The same has been registered in the History Ticket of the petitioner. Therefore, it is submitted that the petition is liable to be dismissed.

We have given our thoughtful consideration to the matter.

As already noticed the petitioner after his conviction and sentence in two separate FIRs for the offences of murder is undergoing life imprisonment. Besides, he was also found using a mobile phone while undergoing his life imprisonment. Therefore, in any case, in view of his conviction in two separate FIRs, his case falls within the definition of 'hardcore prisoner' as defined in Section 2 (aa) (i) (8) of the Act. Section 2 (aa) (i) (8) and (iv) of the Act read as under:-

"Section 2. Definitions. – In this Act, unless the context otherwise, requires:-

- (a) xxx
- (aa) "hardcore prisoner" means a person. –
 - (i) who has been convicted of –
 - (1) to (7) xxx
 - (8) serial killing i.e. murder under Section 302 IPC in two or more cases in different First Information Reports;
 - (9) to (14) xxx
 - (ii) and (iii) xxx
 - (iv) who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or
 - (v) xxx"

The petitioner admittedly stands convicted and sentenced in two different FIRs for the offences of murder; therefore, his case falls within Section 2 (aa) (i) (8) of the Act and he is to be termed as a 'hardcore prisoner'. Besides, a phone has also been detected while he was in jail and a FIR stands registered against him for the offences under Section 42 of the Prisons Act, 1894 and Section 120-B IPC. He has not been convicted in the said case. However, independent of the same, his case falls in the earlier category of 'hardcore prisoner'. In respect of 'hardcore prisoners' special provisions in terms of Section 5A of the Act has been provided which reads as under:-

"5A. 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 grand parent, parent, grandparent-in-laws, parent-in-laws, sibling, spouse or child, under the armed police escort, 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."

The above provision shows that a 'hardcore prisoner' is in fact not to be released on temporary basis or on furlough. Although in terms of the proviso, he may be allowed to attend the occasion of marriages and deaths of his family as mentioned therein under an armed escort.

In S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582, the purposes which a proviso to an enactment may serve was considered by the Supreme Court. It was *inter alia* held that a proviso may serve four different purposes:-

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept or the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

The intent and tenor of the proviso to Section 5A of the Act would fall in category (4) above i.e. a 'hardcore prisoner' is in fact not to be released on temporary basis or on furlough but the proviso may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment and softening the provision to provide an option by way of some relief to a 'hardcore prisoner' in certain exigencies. The real intendment being that a 'hardcore prisoner' is not to be released on temporary basis or on furlough. In view of the harsh nature of the provision, the proviso provides an option of release only in certain family exigencies.

The Superintendent, Central Jail, Ambala having passed the order dated 19.9.2016 (Annexure P2) declining the temporary release of the petitioner on parole, it cannot be said that he committed any irregularity in passing the same as the order has been passed in the spirit of the real intendment of the provisions of Section 5A of the Act.

Even otherwise, it is not the case of the petitioner that he is the only brother of his sister. In fact he does have another brother, who it is stated is a minor. However, the age of the petitioner is mentioned as 25 years in the speaking order (Annexure P2); therefore, his minor brother in any case must have attained the age of discretion to participate in the marriage and perform all the functions that are necessary.

In the circumstances, there is no merit in the petition and the same is, accordingly, dismissed.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

18.11.2016

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Note:-

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| 1. Whether the order is reasoned/speaking | : | Yes. |
| 2. Whether the order is reportable | : | Yes. |