

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

CRWP No.1415 of 2016
Date of decision: 04.11.2016.

Varinder Singh @ Vicky Petitioner.

Versus

State of Haryana and others Respondents.

CORAM: HON'BLE MR. JUSTICE S.S SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. R.S. Dhull, Advocate for the petitioner.

Mr. S.S. Pannu, Deputy Advocate General, Haryana
for the respondents.

S.S SARON, J.

Learned counsel for the State has filed affidavit of Mr. Sher Singh, Superintendent, District Prison, Karnal, in reply to the petition. The reply is taken on record.

Heard learned counsel for the parties.

The petitioner by way of present petition under Articles 226/227 of the Constitution of India read with Section 3 sub-section (1) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('the Act' – for short) seeks issuance of a writ in the nature of mandamus directing the respondent-State and others to grant him interim bail/emergency parole/ furlough for four weeks so as to enable him to attend the 'tervi'/'bhog' ceremony, 'akhand path' and last rites of his paternal grandmother, who died on 24.10.2016.

The petitioner has been convicted on 21.05.2014 by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Kurukshetra in case FIR No.140 dated 04.05.2011, registered at Police Station Sadar Thanesar Kurukshetra, District Kurukshetra, for the offences punishable under Sections 341, 363, 364, 366-A, 376 (2) (g), 302, 201 and 34 of the Indian Penal Code

('IPC'- for short). Against his said conviction and sentence, he has filed Criminal Appeal No. D-1108-DB of 2014 in this Court, which is pending. At present, the petitioner is undergoing his sentence of life imprisonment in District Jail, Karnal.

During the incarceration of the petitioner, his grandmother died on 24.10.2016. For attending her last rites, he was granted emergency parole for five hours so as to attend the funeral of his grandmother. The petitioner then submitted an application on 25.10.2016 before the Superintendent, District Jail, Karnal - respondent No.3 for grant of emergency parole for performing the last rites i.e 'tervi' and 'akhand path' ceremonies of his grandmother. The Superintendent, District Jail, Karnal, it is submitted, has, however, declined the prayer of the petitioner without considering his case. A reference has been made to the provisions of Section 3 (1) (a) of the Act to contend that a prisoner is entitled for consideration for release in case a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill. It is submitted that the mandate of the law is liable to be complied with.

In reply that has been filed today, it is *inter alia* submitted that the petitioner in fact falls in the category of 'hardcore prisoner'. Reliance is placed on Section 2 (aa) (i) (12) of the Act as has been amended vide notification dated 03.10.2013 (Annexure R-1). Besides, reference has been made to Section 5A of the Act. On the strength of the same, it is submitted that the statutory rules impose a legal bar for consideration of the case of the petitioner for temporary release in terms of the above referred provisions of the Act.

We have given our thoughtful consideration to the matter.

In order to appreciate the contention raised, the provisions of Section 2 (aa) (i) (1) to (12) may be noticed; besides the provisions of

Section 5A of the Act may be noticed. Section 2 (aa) (i) (1) to (12) of the Act reads as under:-

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

(a) "District Magistrate" means the District Magistrate of the district within whose jurisdiction the prisoner after his temporary release under this Act, is likely to reside during the period of his release;

[(aa) "hardcore prisoner' means a person,-

(i) who has been convicted of-

(1) robbery under Section 392 or 394 IPC;

(2) dacoity under Section 395, 396 or 397 IPC;

(3) kidnapping for ransom under Section 364-A IPC;

(4) murder or attempt to murder for ransom or extortion under Section 387 read with 302 or Section 387 read with 307 IPC;

(5) rape with murder under Section 376 read with 302 IPC;

(6) rape with a woman below sixteen years of age;

(7) rape as covered under Section 376-A, 376-D or 376-E IPC;

(8) serial killing i.e. Murder under Section 302 IPC is two or more cases in different First Information Reports;

(9) Murder under Section 302 IPC, if the offender is a contract killer as apparent from the facts

mentioned in the judgment of the case;

(10) lurking house trespass or house breaking where death or grievous hurt is caused under Section 459 or 460 IPC;

(11) either of offence under Sections 121 to 124-A IPC;

(12) immoral trafficking under Section 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) involving minors or under Section 366-A, 366-B, 372 or 373 IPC;

A perusal of the above shows that a hardcore prisoner means a person who has been convicted of immoral trafficking under Sections 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 involving minor or under Section 366-A, 366-B, 372 or 373 IPC. The petitioner has been convicted by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Kurukshetra on 21.05.2014. He has been convicted for offence under Section 366-A IPC on account of which he comes within the definition of hardcore prisoner.

Section 5A of the Act relates to special provisions for temporary release of hardcore prisoners. Section 5A (2) of the Act reads as under:

“[5A. Special Provisions for temporary release of hardcore prisoners:- (1)

Notwithstanding anything contained in Section 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:

Provided that a hardcore prisoners may be released on temporary basis to attend the

marriage of his grand child or sibling or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort for a period of forty-eight hours, to be decided by the concerned superintendent of jail;

Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of jail. He shall intimate within twenty-four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.]

[(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 terms of Sub-Section 2 of Section 5A of the Act, a convicted hardcore prisoner who has been awarded death penalty, may be entitled for temporary release or furlough only if he has completed 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.

In terms of the reply that has been filed, the petitioner has undergone imprisonment of two years, eleven months and twenty-four days as an under-trial prisoner from 27.05.2011 to 20.05.2014; besides, he has undergone imprisonment during period of conviction for two years, five months and thirteen days from 21.05.2014 to 03.11.2016. Therefore, on the basis of rules as have been submitted the petitioner is *per se* not entitled for consideration of his case. However, in terms of the proviso to Sub-Section 1 of Section 5A, it is mentioned in the reply that a hardcore prisoner may be released on temporary basis for a period of 48 hours, to be decided by the concerned Superintendent of Jail.

Learned counsel appearing for the State submits that earlier also the petitioner was released for a temporary period of 5 hours to attend the funeral of his grand mother and his release for upto 48 hours under police escort can be again considered to enable him to attend the last rites/'tervi'/'akhand path' ceremonies of his grand-mother, who has died on 24.10.2016.

In the circumstances, the writ petition is disposed of with a direction to the Superintendent, District Jail, Karnal - respondent No. 3 to consider the case of the petitioner for sending him for the last rites/'tervi'/'akhand path' ceremonies of his grandmother for a period of upto 48 hours under an armed police escort.

A copy of this order be handed over to the learned counsel for the State under the signatures of the Bench Secretary for necessary compliance.

(S.S SARON)
JUDGE

(LISA GILL)
JUDGE

04.11.2016

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Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.