

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.1447 of 2016
Date of decision: 01.12.2016.

Vinod Kumar

..... Petitioner.

Versus

State of Haryana and others

..... Respondents.

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

Present: Mr. Baldev Singh Dhillon, 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 reply by way of affidavit of Sh. Vishal Chhibbar, Deputy Superintendent, Central Jail, Ambala on behalf of respondents No. 1 to 3. The reply is taken on record.

Heard learned counsel for the parties.

The criminal writ petition has been filed under Articles 226/227 of the Constitution of India for grant of emergency parole to the petitioner in terms of Section 3 (1) (b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('the Act' - for short) for a period of four

weeks to enable him to make all type of arrangements for the marriage of his younger sister, namely, Sushma, which is to be solemnized on 09.12.2016.

It is submitted that the petitioner is the only son of his old aged parents, out of whom his mother is suffering from disc problem and is unable to make necessary arrangements for the marriage. Further prayer has been made for quashing the impugned order dated 02.11.2016 (Annexure P2) passed by the Superintendent of Jail, Central Jail, Ambala (respondent No.3).

The petitioner has been convicted by the learned Additional Sessions Judge, Ambala on 13.11.2014 in a case FIR No.178 dated 16.12.2012, registered at Police Station Saha, District Ambala for the offences punishable under Sections 302, 120-B, 201, 364 and 392 of the Indian Penal Code ('IPC' - for short). He has been sentenced to undergo rigorous imprisonment for life; besides, pay a fine of Rs.25,000/- and in default of payment thereof, undergo further simple imprisonment for a period of six years and six months.

The petitioner while undergoing his imprisonment filed an application in the office of the Superintendent of Jail, Central Jail, Ambala (respondent No.3) on 02.11.2016 for his temporary release on parole to attend the marriage of his sister. The said application has been declined vide impugned order dated 02.11.2016 (Annexure P2). It is stated that the petitioner is also involved in three other cases, i.e. FIR No.241 of 2014, FIR No.297 of 2014 and FIR No.361 of 2014, registered at Police Station Baldev Nagar, Ambala City for the offences punishable under Section 42 of the Prisons Act, 1894; besides, Sections 188 and 120-B Indian Penal Code. He has undergone his sentence in the said FIRs in terms of orders dated 20.11.2014, 12.02.2015 and 09.04.2015 respectively. The said cases relate to detection of a mobile phone from the petitioner while he was confined in jail and undergoing his

imprisonment. Therefore, in view of the mobile phone being detected from the petitioner while undergoing imprisonment, it is submitted that he falls under the category of “hardcore prisoner” in terms of Section 2 (aa) (iv) of the Act.

During the course of hearing, learned counsel appearing for the petitioner has not been able to dispute the said position. He, however, submits that in any case the petitioner may be released on temporary basis under an armed police escort for a period of forty-eight hours in terms of the first proviso to Section 5A of the Act.

We have given our thoughtful consideration to the matter.

The petitioner falls under the category of “hardcore prisoner” as defined in Section 2 (aa) (iv) of the Act, which reads as under:-

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

[(aa) “hardcore prisoner” means a person, -

(iv) who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or”

Section 5A of the Act provides for special provisions for temporary release of “hardcore prisoners”. Section 5A (1) of the Act reads as under:

“5A. Special Provisions for temporary release of hardcore prisoners:-

(1) Notwithstanding anything contained in Sections 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.”

A perusal of the above shows that notwithstanding anything contained in Section 3 and Section 4 of the Act, no “hardcore prisoner” is entitled to temporary release or furlough. However, in terms of first proviso, it is envisaged that a “hardcore prisoner” may be released on temporary basis to attend the marriage of his siblings under an armed police escort for a period of forty-eight hours to be decided by the concerned Superintendent of Jail.

Keeping in view the fact that mobile phone has been detected from the petitioner on three occasions in respect of which three FIRs, as noticed above, have been registered and he has undergone his imprisonment for the same, the only limited relief that can be granted to him is to enable him to attend the marriage of his sister, namely, Sushma, which is to be solemnized on

09.12.2016, under an armed police escort for a period of forty-eight hours, which is to be decided by the concerned Superintendent of Jail.

In the circumstances, the criminal writ petition is disposed of with the direction that the Superintendent of Jail, Central Jail, Ambala shall consider the request of the petitioner for sending him for the marriage of his sister, namely, Sushma, which is to be solemnized on 09.12.2016 for a period of forty-eight hours under an armed police escort.

(S.S SARON)
JUDGE

01.12.2016
PA

(LISA GILL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*