

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.263 of 2017
Date of decision: 15.3.2017

Ishwar Singh

.... Petitioner

Versus

State of Haryana and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE DARSHAN SINGH.

Present: Mr. Manvender Rathee, Advocate for the petitioner.
Mr. SS Pannu, DAG, Haryana.

S.S. Saron, J.

Learned State Counsel has filed reply of Sh. Shamsheer Singh Dahiya, Superintendent Jail, Central Jail-I, Hisar on behalf of respondents No.1 to 4. The same is taken on record.

Heard learned counsel for the parties.

The petitioner is confined in Central Jail-I, Hisar. He has been convicted by the learned Additional Sessions Judge, Hisar on 2.11.2015 in case FIR No.161 dated 3.2.2014 registered at Police Station Sadar Hisar, District Hisar for the offences under Sections 346, 366, 376-D Indian Penal Code ('IPC' – for short). By a separate order passed on 4.11.2015 he has been sentenced for the offence under Section 376-D IPC to undergo rigorous imprisonment for twenty years; besides, pay a fine of Rs.20,000/- and in default of payment thereof undergo rigorous imprisonment for two years. He has also been sentenced to undergo rigorous imprisonment for

ten years; besides, pay a fine of Rs.10,000/- and in default thereof undergo further rigorous imprisonment for one year for the offence under Section 366 IPC. Lastly he has been sentenced to undergo rigorous imprisonment for one year for the offence under Section 346 IPC. The sentences of imprisonments have been ordered to run concurrently. The petitioner has filed an appeal against the said orders of conviction and sentence i.e. CRA D-1670-DB of 2015 which is pending in this Court.

By way of the present petition under Article 226 of the Constitution of India, the petitioner seeks four weeks' parole for attending the marriage of his sister namely Asha which is to be solemnized on 20.3.2017. The petitioner approached the jail authority for granting him emergency parole for attending the marriage ceremony of his real sister Asha. However, his request, it is stated, has been declined orally.

In terms of the reply that has been filed it is stated that the petitioner is a 'hardcore prisoner' in terms of Section 2 (aa) (i) (7) of the Haryana Good Conduct Prisoners (Temporary Release) Act 1988 ('Act' - for short) and a 'hardcore prisoner' is not entitled for temporary release on parole in view of the provision of Section 5A of the Act and his case can be considered only after he completes five years of his imprisonment in terms of sub-Section (2) of Section 5A of the Act.

As regards the marriage, it is submitted that the fact was got verified and it was found correct that the marriage of the sister of the petitioner is fixed for 20.3.2017. However, the petitioner having been convicted for the offence under Section

376-D IPC is a 'hardcore prisoner' as defined in Section 2 (aa) (i) (7) of the Act, which reads as under:-

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

(a) xxx xxx xxx

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

(i) who has been convicted of -

(1) to (6) xxx xxx xxx

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

Section 5A of the Act which relates to 'special provisions for temporary release of hardcore prisoners' 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 prisoner may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grandparent-in-laws, parent-in-laws, sibling, spouse, child or grandchild 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."

The above provision shows that a 'hardcore prisoner' in fact is not entitled to temporary release or furlough. However, in terms of the first proviso to Section 5A (1) it is envisaged that a 'hardcore prisoner' may be released on temporary basis to attend the marriage of his grandchild or sibling under an armed police

escort for a period of forty-eight hours to be decided by the concerned Superintendent of Jail. Therefore, though a 'hardcore prisoner' is not entitled to temporary release or furlough, yet he is nevertheless entitled for release on temporary basis to attend the marriage of his grandchild or sibling under an armed police escort for a period of forty-eight hours to be decided by the concerned Superintendent of Jail.

According to the learned Counsel for the State, the petitioner is not entitled for release on temporary basis even in view of sub-Section (2) of Section 5A of the Act. It may be noticed that the provisions of sub-Section (2) of Section 5A of the Act envisages that 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. Sub-Section (2) of Section 5A in fact relates to temporary release or furlough, which is to be considered and granted in terms of Sections 3 and 4 respectively of the Act. The first proviso to Section 5A (1) of the Act relates to release on 'temporary basis' under an armed police escort for a period of forty-eight hours. The proviso to Section 5A (1) of the Act is independent of sub-Section (2) of Section 5A of the Act inasmuch as the former relates to release on temporary basis while the latter relates to temporary release i.e. release on parole in terms of Section 3 of the Act and release of furlough in terms of Section 4 of the Act.

In the facts and circumstances, the concerned Superintendent of Jail or any other competent authority under the Act is liable to consider the case of the petitioner for his release on temporary basis to attend the marriage of his sister under an armed police escort for a period of forty-eight hours.

The criminal writ petition is accordingly disposed of with the direction to the Superintendent of the concerned jail or other competent authority under the Act to consider the case of the petitioner for his release on temporary basis to attend the marriage of his sister under an armed police escort for a period of forty-eight hours in terms of the first proviso to Section 5A (1) of the Act.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

15.3.2017
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Note:

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