

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
203**

Crl. Writ Petition No. 866 of 2017

Date of decision: 01.09.2017

Ajay

...PETITIONER

VERSUS

State of Haryana and others

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M.M.S.BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Hoshier Singh Jaswal, Advocate,
for the petitioner.

Ms. Shubhra Singh, Additonal Advocate General, Haryana.

M.M.S.BEDI, J. (ORAL)

On the last date of hearing i.e. on 18.08.2017, the following
order was passed:-

“ Considering the petitioner a hard-core prisoner under
Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners
(Temporary Release) Amendment Act, 2012 and in view of the
provisions of Section 5-A of the Haryana Good Conduct
Prisoners (Temporary Release) Amendment Act, 2012 & 2014,
the petitioner has been refused the benefit of temporary release.
Perusal of the order dated 18.07.2017 passed pursuant to the
directions of this Court dated 12.07.2017 indicates that the

basis for considering the petitioner a hard-core prisoner is that he was found in possession of mobile phone on 29.02.2016, for which, he was awarded major jail punishment and an FIR under Section 42 of the Prison Act, was also registered against him. Though, it has been noticed in order dated 18.07.2017 (Annexure P-2) that the petitioner has been acquitted in that case by the Court of competent jurisdiction, he has still been considered as a hard-core prisoner having been granted a major jail punishment by the Jail Superintendent, for which, he was kept separately in security cell for one month.

Let a specific reply be filed in context to the following point:-

“Whether the award of major jail punishment by the Jail Superintendent will override the effect of acquittal by a Court of competent jurisdiction pertaining to the same offence for the purpose of grant of temporary release?”

For reply and consideration, to come up on 01.09.2017.”

In context to the above-said order, the Superintendent, District Jail, Faridabad, has tried to justify that the order passed by the Jail Superintendent granting jail punishment would have overriding effect over the acquittal by the Court of competent jurisdiction. The relevant para of the reply filed by the Superintendent, District Jail, Faridabad is reproduced as under:-

“ That although the petitioner has been acquitted in the case FIR No. 77 dated 01.03.2016 but he was awarded major

jail punishment by the Superintendent, District Jail, Gurugram for being kept him separately in security cell for 01 month. The punishment awarded to the convict was also judicially appraised by the Ld. District & Sessions Judge, Gurugram vide order No. 8076 dated 08.04.2016 (Annexed as R-3), which is the higher court authority than the acquitting trial court and cannot be overruled. Therefore, being committed a major jail offence and as punished for the same the petitioner fall in the category of “Hardcore” prisoner and not entitled for any furlough/parole release case before completing the compulsory 05 years of imprisonment including the under trial period as mentioned as per section 2 (2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 (Annexed as R-2).”

The above-said explanation has been critically examined by us and we do not find any substance in the justification given by the Superintendent, District Jail, Faridabad. It is made clear that when a jail punishment is awarded to a convict and the same is appraised by the District and Sessions Judge, the said exercise is an exercise primarily on the administrative side whereas the adjudication pertaining to a charge or accusation in an FIR by the Judicial Magistrate is on judicial side, which has got an overriding effect over the administrative decision taken under the Jail Manual or under the Prisoners Act.

In the present case, the provisions of Section 5-A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 & 2014 have been misused to deny the concession of parole to the

petitioner.

In the peculiar circumstances of this case, we allow the present criminal writ petition by setting aside the order dated 18.07.2017 passed by the Superintendent, District Jail, Faridabad and direct respondent No. 1 to reconsider the case of the petitioner for parole ignoring the allegation/charge of petitioner having been found in possession of a mobile phone on 29.02.2016 as he has already been acquitted of the said accusation under Section 42-A of The Haryana Prisoners (Haryana Amendment) Act, 2014 by Judicial Magistrate Ist Class, Sohna vide decision dated 02.01.2017.

On the basis of the material available till date, the petitioner is not a “Hardcore” prisoner in context to the provisions of Section 5-A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 & 2014, which debars the prisoner to be released on parole on temporary basis.

Fresh decision will be taken within a period of one month after the receipt of copy of this order.

(M.M.S.BEDI)
JUDGE

September 01, 2017
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No