

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP 669 of 2017 (O&M)

Date of decision : 17.1.2018

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Sahab Singh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Deepak Singh Saini, Advocate for the petitioner

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

This petition under Article 226 of the Constitution of India read with Section 3 (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, (hereinafter to be referred to as 'the Act') to release the petitioner on parole for a period of four weeks to repair his house has been filed by Sahab Singh – petitioner, presently undergoing imprisonment for 10 years, in District Jail, Karnal, after having been convicted in a case under the NDPS Act.

It is contended that according to the petitioner, he has

undergone custody of 5 years 7 months. His house is very old and is in bad condition, endangering the safety of his family members residing in the house. Therefore, he wants to carry out necessary repairs therein; that no other able person is there in the family to do that task, as such he be granted parole for four weeks; that he had moved this Court earlier and this Court had issued direction to Superintendent, District Jail, Karnal, to decide the pending application of petitioner within one month from the date of receipt of certified copy of the order. However, respondent No.3 dismissed the application with the following observations:-

“the convict released on six weeks agriculture parole on 6.8.2013 and was directed to surrender on 18.9.2013. However, he did not surrender on the specified date and remained parole absconder from 18.9.2013 to 23.6.2014 during his last parole.”

The petitioner while seeking setting aside of the order passed by the Superintendent of Prison, District Prison, Karnal, prays that his petition be allowed.

The petition is being resisted by the respondents. In the written reply filed by them, they have made preliminary submission that the Act as amended in 2012, 2013, 2014 and 2015, has been enacted to provide temporary release to the prisoners for good conduct on certain conditions. The petitioner cannot claim that concession as a matter of right; that the petitioner was convicted and sentenced to 10 years rigorous imprisonment in a case registered vide FIR No. 95 dated 4.5.2002 under Section 15 of the NDPS Act, Police

Station Taraori, District Karnal, vide judgment dated 14.1.2003; the appeal filed by him against the judgment of his conviction and sentence has been dismissed by the High Court; that the petitioner was released on six weeks' agriculture parole on 6.8.2013 and was directed to surrender on 18.9.2013; that he did not surrender on the specified date and was arrested on 23.6.2014 by the police; that he remained parole absconder from 18.9.2013 to 23.6.2014; that the petitioner has been convicted for jumping parole under Section 8/9 in case FIR No. 826 dated 21.11.2013 under Section 8/9 of the Parole Act, Police Station Sadar, Karnal by Additional Chief Judicial Magistrate, Karnal on 8.5.2015 and sentenced to undergo simple imprisonment for a period of 1 year and to pay a fine of Rs.500/-, in default of payment of fine to undergo further simple imprisonment for a period of 15 days. Therefore, petitioner comes under the category of hardcore prisoner in terms of clause 2 (aa) (v) of the Parole Act, which provides that hardcore prisoner means a person who failed to surrender himself within a period of ten days from the date on which he should have to surrender on the expiry of period for which he was released under this Act and that sub-section 2 of Section 5A of the Parole Act as amended in 2015 reads as under:-

“(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 year 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."

Since the petitioner has completed 2 years, 9 months and 25 days as on 23.7.2017, after being categorized as hardcore prisoner, therefore at present he is not eligible for any kind of parole as he has not completed 5 years of imprisonment as per sub-section 2 of Section 5A of the Parole Act as amended in 2015. The representation submitted by the petitioner was rejected vide speaking order dated 26.5.2017; that this Court vice judgment passed in CRWP No. 483 of 2012 decided on 16.3.2012 has held as under:-

"If the statutory rules impose a legal bar on consideration of the case of the petitioners for temporary release under the aforesaid Act, the same ought not to be overcome by a judicial order"

This very stand has been reiterated in reply on merits, while craving for dismissal of the petition.

I have heard learned counsel for the parties, besides going through the record of the case and I find that keeping in view the past

conduct of the petitioner when he had jumped parole and did not report back on the due date and was rather arrested after a period of more than 9 months and has been convicted on that account by the Court of competent jurisdiction, further for the reason that he comes within the category of hardcore prisoner in terms of the Parole Act, no ground is made out to grant the concession of parole to him, as asked for. Such petition, being devoid of any merit, is dismissed accordingly.

(**H.S. Madaan**)
Judge

17.1.2018		
chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No