

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.10678 of 2018 (O&M)

Date of Decision:20.07.2018

Manoj alias Sheru

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.V.S. Rana, Advocate,
for the petitioner.

Mr.Vishal Garg, Addl. A.G., Haryana

RAKESH KUMAR JAIN, J.

The petitioner, a life convict, presently lodged in District Jail, Gurugram, has filed this petition for seeking emergency parole for 4 weeks under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the Act'] and Rules 8 & 10(i) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 [for short 'the Rules'] to enable him to get his children admitted in Class V and VIII respectively.

In brief, the petitioner was tried in a case registered vide FIR No.115 dated 11.4.2010 under Sections 302, 148, 149, 323, 324 & 447 of the IPC at Police Station Gannaur, District Sonapat by the Additional Sessions Judge, Sonapat and has been sentenced to life imprisonment by order dated 30.03.2013. He was also tried in FIR No.610 dated 1.12.2015 registered under Section 9 of the Act and was convicted by SDJM, Gannaur, Sonapat for a period of one year. He was given furlough for two weeks on

21.11.2015 in compliance of the order of the District Magistrate, Sonapat but he did not surrender on the due date rather he was arrested on 3.12.2015 by the local police and a case was registered against him vide FIR No.614 dated 2.12.2015 at Police Station Gannaur, Sonapat.

According to the respondents, the petitioner had overstayed for 12 days. The petitioner had also allegedly quarreled with the other inmates while he was in District Jail, Kurukshetra and was awarded punishment of warning in terms of para 612(1) of the Punjab Jail Manual and was kept in security ward.

Learned counsel for the petitioner has submitted that even if the petitioner had overstayed the furlough, he is still entitled to the benefit of parole and has referred to Rule 10 of the Rules, which read as under: -

“10. Consequences of overstay. [Section 10(2)(d)] – A convict, who does not surrender in jail on the due date and time after availing the granted parole/furlough his further parole/furlough shall be considered as under –

(1) if the convict overstays 15 days of his parole/furlough, his parole/furlough case shall not be entertained by the superintendent of Jail earlier than one year from the date of his surrender/arrest;

(2) if the convict overstays 30 days or more of his parole/furlough his case shall not be entertained by the Superintendent of Jail earlier than two years from the date of his surrender/arrest.”

Learned counsel for the petitioner has further referred to Rule 8 of the Rules to contend that admission in school of the children is defined as sufficient cause in terms of Section 3(1)(d) of the Act. He has further submitted that even if he had overstayed the period of his parole/furlough, his application would be considered after a period of one year after his surrender/arrest. In support of his submission, he has relied upon a decision rendered by the Division Bench of this Court in *CRWP No.443 of 2016* titled as “*Manoj Vs. State of Haryana etc*” decided on 8.7.2016.

On the other hand, learned counsel for the respondents has submitted that since the petitioner had failed to surrender within a period of 10 days from the date he was directed to surrender after the completion of period of his furlough, his case would fall within the category of hardcore prisoner and has referred to Section 2(aa)(v) of the Act, which is reproduced as under:-

“Who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.”

It is further submitted that since the petitioner had overstayed the period of his furlough for more than 10 days, therefore, being a hardcore prisoner he could not have filed the application under Section 3(1)(d) of the Act as the special provision for temporary release of hardcore prisoner is provided in Section 5A of the Act which is reproduced 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 his daughter for ninety-six hours and for the marriage of his son for seventy-to 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 released in future.”

I have heard learned counsel for the parties and perused the record.

The Act deals with the provisions of temporary release of prisoners for good conduct on certain conditions. There are two types of prisoners defined in the Act. The ‘prisoner’ is defined under Section 2(d) of the Act, which means a person confined in prison or jail or other institution under a sentence of imprisonment for life or imprisonment by any Court in India or the Court Martial or any other authority exercising the powers of a Criminal Court. The ‘hardcore prisoner’ is defined under Section 2(aa) of the Act, which read as under:-

"(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 yeas 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 contact 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 offences 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.*
- (13) *offence under section 17© or 18(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or*
- (14) *offence under Section 14 of the Protection of children from Sexual Offences Act, 2012 (Central Act 32 of 2012); or*
- (ii) *who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter*

XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months;

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded;

Provided further that if a conviction has been set aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to death penalty; or

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

(v) Who failed to surrender himself within a period of ten

days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.

Provided that the State Government may, by notification include any offence in the list of offences mentioned above.”

Section 3 of the Act deals with the ‘Temporary Release of Prisoners on certain grounds’, which read as under: -

3. Temporary release of prisoners on certain grounds - (1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-Section (2), any prisoner, if the State Government is satisfied that-

(a) a member of the prisoner’s family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, grand daughter, brother,

sister, sister's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for sloughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the grounds specified in clause © of sub-section (1), six weeks;

Provided that the temporary release under clause (c) can be availed more than once during the year, which

shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner.

(4) The State Government may, by notification, authorize any officer to exercise its powers under this section in respect of all or any other ground specified there under.

Section 4 of the Act deals with the ‘Temporary release of prisoners on furlough’, which read as under: -

“4. (1) The State Government or any other officer authorized by it in this behalf may, in consultation with such other officer as may be appointed by the state Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who-

(a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the persistence detention, if any;

(b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned at least three annual good conduct remission;

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8, the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner.

Section 8 of the Act deals with the liability of prisoner to surrender on expiry of release period and consequences of overstaying. According to Section 8(2) of the Act, if a prisoner do not surrender himself within a period of 10 days from the date on which he should have surrendered then he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer Incharge of the prison from which he was released to undergo the unexpired portion of his sentence but as per Section 8(3) of the Act if a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient

which he was released, all or any of the penalties mentioned in Section 8(3)(a) to (f) can be imposed by the Superintendent of the Jail upon such prisoner but after affording him an opportunity of hearing. Section 9 of the Act provides the 'penalty for failure to surrender' as per which if any prisoner, who is liable to be arrested under Section 8(2) of the Act, shall be liable for punishment with imprisonment of either description which may extend to three years but shall not be less than two years. Rule 10 of the Rules provides the 'consequences for overstay' which says that the application for parole/furlough would not be entertained by the Superintendent of Jail earlier than one year in case of overstay for 15 days and not earlier than two years in case of overstay of 30 days but the application has to be dealt with in case of overstay of more than 10 days after having been labelled as hardcore prisoner under Section 2(aa) of the Act, the proceedings have to be carried out in terms of Section 5A of the act.

In the present case, the petitioner, who was earlier falling in the definition of 'prisoner' as provided under Section 2(d) of the Act comes within the definition of 'hardcore prisoner' as provided under Section 2(aa)(v) of the Act and the application filed by him for his release on parole, which is also defined in Rule 2(d) of the Rules would mean temporary release of convict is not maintainable as hardcore person has to apply in terms of Section 5A of the Act. The petitioner has not applied to be released under Section 5A of the Act, therefore, the application filed under Section 3(1)(d) of the Act is not maintainable and thus the present petition is hereby dismissed.

20.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE