

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

CWP No.10876 of 2018
Date of Decision:07.09.2018

Saddam

..... Petitioner

Vs.

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Susheel Gautam, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for furlough for a period of three weeks in terms of Section 4(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the Act']. The petitioner is presently lodged in District Jail Karnal in a case registered vide FIR No.19 dated 27.01.2015 under Sections 302, 201, 120B read with Section 34 of the Indian Penal Code, 1860 [for short 'the IPC'] at Police Station, G.R.P. Panipat, District Panipat and sentenced to undergo rigorous imprisonment for life on 1.12.2017. The allegation against the petitioner is that he was having an affair with Monika who was married to one Pawan (deceased). Monika exhorted the petitioner to kill Pawan. The petitioner was also married to one Haruna and got divorce from her on 24.1.2015. He along with Kaptan, Sarik and Jaibir killed Pawan on 25.01.2015 on the assurance of Monika that she would give ₹1 lakh to each of them. The application of the petitioner for parole has been rejected.

In the reply, the respondents have averred that the petitioner

2(aa)(i)(9) of the Act in which it is provided that *“murder under Section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case”*. It is further submitted that the case of ‘hardcore prisoner’ has to be dealt with in terms of Section 5A(2) of the Act as per which the case of the petitioner for furlough would be considered after completion of 5 years of imprisonment and it is also to be seen that he has also not been awarded any major punishment by the Superintendent of Jail which has to be judicially appraised by the District and Sessions Judge. It is also a case of the respondents that the petitioner has completed 3 years 3 months and 14 days of sentence as on 21.5.2018 and only 5 months and 21 days of actual sentence after conviction therefore, he is not eligible for any kind of parole/furlough.

Learned counsel for the petitioner has submitted that the respondents have misread the provisions of Section 2(aa)(i)(9) of the Act as only the allegations were made about the contract killing but there is no finding by the trial Court in that regard.

On the other hand, learned counsel for the respondents has submitted that it is clearly provided in the said provision that only the facts are to be seen from the judgment of the case.

I have heard learned counsel for the parties and after perusal of record, am of the considered opinion that there is an error in the approach of the respondents in reading Section 2(aa)(i) of the Act to hold the petitioner to be a ‘hardcore prisoner’. Although language used by the legislature in Section 2(aa)(i)(9) of the Act is that “if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case” but it does not mean that mere allegations would hold the prisoner to be a contract killer

case. The reason is obvious because there is a lot of difference between a 'prisoner' and 'hardcore prisoner', who are separately defined in Section 2(d) and 2(aa)(i)(9) of the Act, respectively. The prisoner has a right for seeking a temporary relief of furlough/parole under Sections 3 & 4 of the Act but the case of a 'hardcore prisoner' is dealt with in terms of Section 5A of the Act. Therefore, it is hereby held that it is not merely the facts mentioned in the judgment of the case would declare a prisoner as a 'hardcore prisoner' but there should be a categoric finding in the judgment of the case on the basis of the appreciation of facts that the murder has been committed by the offender as a contract killer.

In view thereof, the present petition is hereby allowed and the respondents are directed to consider the case of the petitioner for grant of furlough in terms of the observations made hereinabove.

07.09.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*