

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

**CWP No.12825 of 2018
Date of Decision:16.07.2018**

Ashwani Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.S.Dhull, Advocate, for the petitioner.

Ms.Nidhi Garg, AAG Haryana.

RITU BAHRI, J. (ORAL)

The petitioner has come up in writ petition for issuance of a writ especially in the nature of Mandamus directing the respondents to release the petitioner on 3 weeks furlough in view of Section 4(1) and Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

The petitioner has been convicted and sentenced to undergo rigorous imprisonment for life vide order dated 04.12.2009 and 07.12.2009 respectively in an FIR No.107 dated 20.10.2007, for the offence under Sections 364-A IPC, registered at Police Station Dhand, District Kaithal. The Criminal Appeal No.CRA-D-1112-DB of 2009 was filed by the petitioner which was dismissed on 19.09.2016. The petitioner has applied for 3 weeks furlough to the Jail Superintendent, Faridabad, to enable him to meet with his family members and restoring social ties before the respondent No.4 and the same was forwarded before the District Magistrate, Kaithal by recommendation for grant of furlough as petitioner fulfills all the conditions.

On notice, reply has been filed on behalf of respondents No.1 to

4 stating therein that during a search conducted on 11.11.2017, a mobile phone was recovered from the possession of the petitioner and a case FIR No.1628 dated 11.11.2017, U/s 42-A Prison Act, P.S.City Jagadhari (not on bail) was registered against him and facing trial in the learned Court of ACJM, Jagadhari. Therefore, the case of the petitioner fall in the category of hardcore prisoners, as per Section 2(aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013.

The Division Bench of this Court while deciding the case titled Gurdeep Singh Vs. State of Haryana passed in CRWP No.1374 of 2017 decided on 07.12.2017, has rejected for denying grant of parole to any accused for agricultural purpose. In this regard, it has been observed as under:-

“ While this Court, in no uncertain terms, holds that the jail inmates cannot be allowed to keep mobile phones or such other gadgets etc. which are oftenly used to commit professional crimes like demand of ransom, kidnapping etc. Nevertheless, it is an integral part of the jail reforms that the inmates should be provided with telephone facilities to connect themselves with their family, nears and dears. Such a facility can be made available by the jail authorities through a land line number(s). In this backdrop, it is difficult to accept that the mere recovery of mobile phone from an inmate against whom there is not even a whisper that he ever misused the phone either to blackmail some one or for demanding ransom or he involved himself in any other nature of crime, would be sufficient to categorise him as a 'hardcore' prisoner. It is only in a case where the inmate is found to have misused the mobile facility for committing another crime while inside the jail, that he should be put into the category of

'hardcore criminals' and be deprived of his statutory right of parole. The petitioner, in the absence of any such allegation, does not fall in that exceptional category.

In view of the above, the present writ petition is allowed by giving directions to the respondents to release the petitioner on 3 weeks parole in view of Section 4(1) and Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

Disposed of accordingly.

(RITU BAHRI)
JUDGE

16.07.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No