

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13356 of 2018
Date of Decision:05.07.2018

Rana Partap

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Manish Soni, Advocate, for the petitioner.

Mr.Hitesh Pandit, Addl.A.G.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 to treat his old age mother, in view of Section 4 of the Haryana Good Conduct Prisoners, Temporary Release Act, 1988.

Replies have been filed by learned State counsel on behalf of respondents No.1 to 4. The same are taken on record.

The present petition is firstly taken up for grant of 3 weeks parole/furlough to the petitioner who has been convicted in FIR No.130 of 2012, registered at Police Station Pataudi, District Gurugram for commission of offence punishable under Section 302, 452, 120B IPC and 25/54/59 of the Arms Act. The petitioner has made an application (Annexure P-1) for release him on furlough before the Superintendent Jail, Gurugram, on the ground that he is in custody for last 6 years and wants to meet his old aged mother. In response to the same, reply has been filed by the State. A perusal of paragraph-6 of the reply shows that the petitioner has undergone 05 years, 11 months and 19 days of actual sentence and 07 years, 01 month and 19 days total sentence including remission. It is further submitted in the written statement that he is involved in three cases which are as under:

(a) 01 Year RI with compensation Rs.70 Lakh I/d 06 Months

SI convicted by the learned Court of Ms.Reetu, JMIC Gurugram on 25.01.2014 in Case No.3951/12, U/s 138 NI Act, PS.Udhyog Vihar, Gurugram and release on sentence already undergone by the order of the learned Court of Sh.S.K.Khanduja, Addl.Sessions Judge Gurugram on 03.04.2014.

(B) 01 Year RI with compensation Rs.1 Crore I/d 06 months SI convicted by the learned Court of Ms.Reetu, JMIC Gurugram on 25.01.2014 in Case No.3952/12, U/s 138 NI Act, PS Udhyog Vihar, Gurugram and release on sentence already undergone by the order of the learned Court of Sh.S.K.Khanduja, Addl.Sessions Judge Gurugram on 03.04.2014.

© Crl.Case No.28/2015, U/s 138 NI Act, titled as Rohtash Vs. Rana Partap-No need to produce as per Ld. Court of JMIC Gurugram vide order dated 10.11.2015.

It has further been informed in the reply that during search on 17.02.2014, a mobile phone was recovered from the possession of the petitioner when he was undergoing 06 months SI sentence in lieu of compensation in case No.3951/12 U/s 138 NI act, PS. Udhyog Vihar, Gurugram, regarding which a punishment of 30 days separate confinement was given to the convict by the Superintendent Jail and the same was sent to the District and Sessions Judge, Gurugram for judicial appraisal. The District and Sessions Judge, Gurugram, had approved the judicial appraisal vide their office letter No.6945 dated 14.03.2014 (Annexure R-1) and declared as per Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 and 2013 Section para 2(aa)(iv), petitioner is hardcore prisoner and he is not entitled for parole/furlough at this state. He may be entitled for parole/furlough only after completions of five years of imprisonment from the date of recovery of mobile phone i.e. 17.02.2014.

The Division Bench of this Court while deciding the case titled Gurdeep Singh Vs. State of Haryana, 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.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 3 weeks furlough to meet his old aged mother, in view of Section 4 of the Haryana Good Conduct Prisoners, Temporary Release Act, 1988.

Disposed of accordingly.

Vide order dated 24.05.2018 passed in the present case, the Co-ordinate Bench of this Court had observed that the authorities are taking undue delay for the decision of granting parole/furlough and applications were not be considered by the department in time. The respondent/State was directed to furnish information as to whether the concerned authority can hold office in the jail premises at regular intervals to decide application of this nature as they concern right of the inmates under Article 21 of the Constitution of India. Sometime was sought to get instructions on

31.05.2018 and respondent No.1 was directed to be present in Court. Thereafter, application is made for exemption of personal appearance that certified copy of the order dated 24.05.2018 was not received in the office. The application with regard to exemption of personal appearance of respondent No.1 which has been allowed. However, in paragraph 6 of the separate affidavit, The Director General of Prisons, Haryana has undertake to take more positive steps in order to dispose of the applications of the convicts/Jail inmates for grant of parole/furlough well within time. In view of the directions issued by this Hon'ble Court, the Director General of Prisons, Haryana vide letter No.30169/96 dated 22.06.2018 (Annexure P-5) has requested the Divisional Commissioner/Police Commissioner/Deputy Commissioners and Superintendent of Police to ensure time bound disposal of parole/furlough applications. Keeping in view the above facts, they have referred the judgement (Annexure R-8) whereby a prayer for grant of parole was denied to the accused as he was found carrying a mobile. However, while dismissing the application, reference was made by the judgment in the case of Ajay Jadeja @ Janak Vs. State of Haryana and others (decided on 14.12.2012). A perusal of the said judgment shows that petitioner being a hardcore prisoner is not entitled for parole. He cannot be granted this concession merely because he was convicted prior to insertion of Section 5A in the Principal Act. In case of a hardcore prisoner, who is involved in many serious crimes, liberal approach cannot be adopted. In view of the matter, the petitioner could not be hear to say that the amended provision of Section 5-A cannot be made applicable in his case to deny him benefit of temporary release on parole.

However, keeping in view this matter and judgment referred above, four weeks time is granted to the respondents to furnish information as to how many application for granting parole to the convicts have been decided by them in which recovery of mobile phone has been made from the convicts and other pending cases to save time of the Court.

Adjourned to 13.08.2018.

(RITU BAHRI)
JUDGE

05.07.2018