

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

CWP No. 14054 of 2018
Date of Decision: 30.05.2018

HEMANT @ BANTI

... Petitioner

VS.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Krishan Singh, Advocate,
for the petitioner .

RAKESH KUMAR JAIN, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 16.10.2017 passed by respondent No. 3 by which his application for seeking parole for four weeks for the purpose of house repair has been rejected.

The petitioner, a life convict, presently lodged in Central Jail-I, Hisar, has filed an application to the Superintendent, Central Jail-I, Hisar, for parole for four weeks for the purpose of house repair. This application has been turned down on the ground that the petitioner falls within the definition of the 'Hardcore Prisoner' in view of Section 2 (aa) (v) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 (hereinafter referred to as "the Act") which provides that *who fails 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*. The word 'failed' was further amended as 'fails' by way of a corrigendum.

The allegation against the petitioner is that earlier he was released on furlough for three weeks on 27.02.2014 and was directed to surrender at jail gate on 21.03.2014. However, the petitioner did not surrender and absconded from furlough and overstayed for the period of 2 months and 24 days. Thereafter, he was admitted in jail by the police on 15.06.2014 and an FIR No. 139 dated 27.04.2014, under Section 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 at Police Station Bhattu Kalan was also registered against the petitioner.

Respondent No. 3 has observed, while rejecting the application of the petitioner, that the application for parole under Section 3 of the Act cannot be entertained because the petitioner falls within the definition of 'Hardcore Prisoner' and in such circumstances, the application has to be filed under Section 5A of the Act in which it is provided that such type of application cannot be entertained till the expiry of five years of imprisonment. But, in the present case, petitioner has not completed five years of imprisonment.

However, learned counsel for the petitioner has relied upon a decision of the Division Bench of this Court passed in CRWP No. 1078 of 2014 titled as Sonu @ Arun Vs. State of Haryana and Others to contend that the provisions of amended act would not apply retrospectively.

I have heard learned counsel for the petitioner and also perused the record with his able assistance.

There is no dispute regarding the facts narrated hereinabove. The only issue which has to be decided by this Court is as to whether the amended Act would apply to the case of the petitioner or not?

The petitioner has committed the jail offence on 27.04.2014 for which an FIR 139 dated 27.04.2014 was registered under Section 8/9 of the Act. The judgement in the case of Sonu @ Arun (Supra) which is relied upon by the learned counsel for the petitioner is not applicable in the present case because in that case the convict was found in possession of a mobile phone on 11.06.2012 and accordingly, an FIR No. 293 dated 11.06.2012 was registered against him much before the amended act was notified vide notification dated 01.10.2012. In this background, the Division Bench of this Court has held that at the time when the said convict had committed the offence, there was no definition provided for the 'Hardcore Prisoner', therefore, amended Act was not applied retrospectively. There is no dispute about the law laid down in the case of Sonu @ Arun (Supra) but unfortunately, it would not apply to the case of the petitioner because he has committed the jail offence after coming into force the amendment Act and therefore, it would not apply to the case of the petitioner who has been declared as a hardcore prisoner.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed, though without any order as to costs.

May 30, 2018

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**[RAKESH KUMAR JAIN]
JUDGE**

Whether speaking / reasoned :

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Yes / No

Whether Reportable :

Yes / No