

In the High Court of Punjab and Haryana at Chandigarh

CWP No.15149 of 2018

Date of decision: September 11, 2018

Mukesh Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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

Ms. Safia Gupta, Assistant Advocate General, Haryana.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed for seeking parole under Section 3 sub sections (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') and Rule 8(iii) of the Haryana Good Conduct Prisoners (Temporary Release) Rule, 2007 (for short 'the Rule') for a period of four weeks for the purpose of house repair.

The petitioner is confined in the District Jail, Faridabad, suffering life sentence for an offence committed under Section 302 of the Indian Penal Code and 25 of the Arms Act. The petitioner has applied for parole for a period of four weeks for the purpose of house repair and also appended photographs of his house to show its present condition. His application made to the Superintendent District Jail, Faridabad was not decided. Therefore, he has approached this Court.

In the reply filed by the respondents, it is pointed out that the case of the petitioner falls in the category of hardcore prisoners, as per Section 2(aa) (iv) of the Haryana Good Conduct

Prisoners (Temporary Release) Amendment Act, 2013, on the ground that he has been detected in possession of a cell phone with sim card inside the jail premises. On account of commission of said offence, FIR No.397 dated 15.12.2013, under Section 42 Prisons Act, at Police Station Sadar Ballabhgarh, Faridabad was registered against the petitioner.

Learned counsel for the petitioner has submitted that the petitioner has been acquitted by the Judicial Magistrate, Ist Class, Faridabad in the said case. He has further submitted that even if the act of the petitioner has been judicially appraised by the concerned District and Sessions Judge, it was only an administrative act which cannot override the judicial decision rendered while acquitting him from the charges of keeping a mobile phone inside the jail premises. In this regard, he has relied upon the decision of this Court in the case of **Ajay Vs. State of Haryana and others**, decided on 01.09.2017.

I have heard learned counsel for the parties.

There are two types of the persons languishing in jail i.e. the convicts and the under trials. Even amongst the convicts, there are two types i.e. prisoners and hard core prisoners as defined under Section 2(aa) of Haryana Good Prisoners (Temporary Release) Act, 1988. There are separate set of provisions of grant of parole or furlough to the prisoners and hard core prisoners. In the case of hard core prisoner, the parole or furlough is granted only if he has completed his five years imprisonment whereas the said restriction is not there in the case of prisoner, who applied parole or furlough.

The petitioner has been denied of parole only on the ground that he is considered to be a hard core prisoner and period of five years had not expired whereas according to learned counsel for the petitioner the allegations against the petitioner that he become hard core prisoner is not proved because the petitioner has been released/acquitted in the last case, which was registered on account of possessing mobile

phone in the jail premises.

In view of the above, I am of the considered opinion that the petitioner cannot be considered as a hard core prisoner only because of registration of the FIR No.397 dated 15.12.2013 in which he has already been acquitted by the Court. There are no other allegations against the petitioner, which placed him within the definition of a hard core prisoner.

This petition is, accordingly, allowed. The authorities are directed to consider the case of the petitioner for grant of parole and necessary order shall be passed within a period of seven days from the date of receipt of a copy of this order.

(RAKESH KUMAR JAIN)

JUDGE

September 11, 2018

jt

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No