

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17057 of 2018

Date of decision: September 06, 2018

Kulwant alias Monu

...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.

Mr.Rahul Mohan, DAG Haryana.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated 26.5.2018 passed by Superintendent, District Jail, Rohtak by which prayer made by the petitioner for grant of parole has been declined on the ground that the petitioner falls under the category of Hardcore prisoner as he was found in possession of mobile phone in the jail premises.

Counsel for the petitioner has submitted that FIR No.151/2016 was registered against the petitioner under Section 42 of the Prisons Act at P.S.Shivaji Colony, Rohtak. It is submitted that the petitioner has not been convicted in the said case as the trial is still going on.

Counsel for the respondent has submitted that once the petitioner has been found in possession of mobile phone in the jail premises during the currency of his sentence, he is termed to be a hard core prisoner in term of Section 2 (aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act'). In rebuttal, counsel for the petitioner

has relied upon a judgment of this Court rendered in ***Criminal Writ Petition***

No. 1299 of 2015 titled as Sunil @ Shilu Vs. State of Haryana and others decided on 27.09.2016 about the recovery of a mobile phone and registration of the case under Section 42 of the Prisons Act. This Court has made the following observations:-

“A presumption of innocence is available to such an accused like the petitioner who is facing trial in a case under Section 42 of the Prisons Act as also under Sections 120-B and 201 IPC. It is a fundamental principle of criminal jurisprudence that every person accused of an offence is presumed to be innocent unless he is proved guilty and convicted of the charges that are alleged against him. A right of a fair trial is available to a person under going imprisonment as well as an innocent person. An accused is to be presumed innocent until proved to be otherwise in a fairly conducted trial. Therefore, at this stage to decline temporary release on parole to the petitioner would amount to pre-judging the guilt of the petitioner, which is yet to be established and proved. It has still to be proved by the prosecution in the pending trial that a mobile phone had been detected from him. To hold that it had been detected would be quite iniquitous, besides, being improper. In other words, the guilt of the accused can only be said to be established on his conviction by a Court of competent jurisdiction and the same cannot be pre-judged on mere allegations of the charges that have been framed.

Therefore, if a prisoner is not convicted of the said charges, he cannot be labelled as a 'hard core prisoner' within the meaning of Section 2 (aa) of the Act so as to disentitle him for consideration for temporary release on parole.

Keeping in view the aforesaid position, it would be just and expedient that the competent authority considers the agriculture parole case of the petitioner without the disability of his being termed as a 'hard core prisoner' as the charge in respect of detection of a mobile phone has not yet been proved and established.

In the circumstances, the writ petition is allowed and the competent authority/respondents shall consider the temporary release of the petitioner for agriculture parole in accordance with law and without him being labelled as a 'hard core prisoner' at least till his guilt is established. The exercise of consideration shall be carried out as expeditiously as possible and preferably within four weeks from the date of receipt of copy of this order.”

After hearing the counsel for the parties and taking into consideration the aforesaid facts and circumstances much less the law laid down in **Sunil @ Shilu's case (supra)**, the present petition is hereby allowed and the matter is remanded back to the competent Authority to reconsider the case of the petitioner for temporary release on parole for house repair. Needful shall be done within a period of 15 days from the date of receipt of certified copy of this order.

September 06, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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