

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

CWP No.17333 of 2018
Date of Decision:28.09.2018

Ajmer

..... Petitioner

Vs.

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Susheel Gautam, Advocate, for the petitioner.

Ms.Safia Gupta, AAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioner, presently lodged in District Jail, Karnal, has challenged the order dated 16.6.2018 passed by the Superintendent of Prison, District Prison, Karnal by which his prayer for grant of parole has been declined.

In the reply filed by respondents No.1 to 5, it is averred that the petitioner has spent 4 years and 23 days as under trial and 7 years 9 months and 19 days under conviction as on the date when the said reply was filed i.e. 26.7.2018. The petitioner is having in his family the wife, daughter of 6 years of age and a son of 4 year of age. He applied for parole for making necessary arrangement for the admission of his children in school but his application has been dismissed by the impugned order dated 16.6.2018 on the ground that he was declared a 'hardcore prisoner' in the past for keeping a mobile phone in the jail premises and was not entitled for parole in terms

Release) Act, 1988 [for short 'the Act']. The allegation against the petitioner is that a mobile phone was recovered from his possession on 22.5.2009 when he was in District Jail, Sonapat. He was punished for separate confinement by the then Superintendent of Prison, Sonapat for committing jail offence for fighting with another fellow inmate. The petitioner was not allowed parole/furlough for five years i.e. from 2012 to 2016 in view of the provisions of Section 5A(2) of the Act. He was granted furlough for three weeks i.e. from 18.2.2016 to 11.03.2016 and four weeks parole i.e. from 22.6.2016 to 21.7.2016. He was again detected of using mobile phone in the prison premises on 21.8.2016 in which he was awarded punishment for one month separate confinement. The respondents have thus refused to grant him parole for the purpose of admission of his children in terms of Section 5A(2) of the Act.

Learned counsel for the petitioner has submitted that Section 5A(2) of the Act says that a 'hardcore prisoner' could be entitled to be released on furlough only if he has completed five years in jail and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.

Learned counsel for the petitioner has relied upon the following decisions of this Court:-

- (1) *CRWP No.1374 of 2017 titled as "Gurdeep Singh Vs. State of Haryana and others" decided on 7.12.2017 (DB)*
- (2) *CWP No.4754 of 2018 titled as "Varinder Singh @ Vicky Vs. State of Haryana and others" decided on 15.6.2018*

(3) *CWP No.8565 of 2018 titled as “Rakesh Vs. State of Haryana and others” decided on 12.04.2018.*

It is submitted that in the case of ***Gurdeep Singh (Supra)***, the life convict was detected with mobile phone and was denied parole on the ground that he would fall in the category of ‘hardcore prisoner’. The Division Bench held that until and unless there is an allegation or even a whisper that the convict has been misusing the phone either to blackmail someone or for demanding ransom or involved himself in any other nature of crime, he cannot be put in the category of ‘hardcore prisoner’. Rather it is observed that if the prisoner is found to have misused the mobile facility for committing another crime while inside the jail then he would be put into the category of ‘hardcore prisoner’ and may be deprived of his statutory right of parole but in the absence of any such allegations he would not fall in the said exceptional category.

The decision in the case of ***Gurdeep Singh (Supra)*** has been followed in the cases of ***Rakesh (Supra)*** and ***Varinder Singh @ Vicky (Supra)*** by this Court. Thus in view of the law laid down by this Court in the case of ***Gurdeep Singh (Supra)*** and there being no allegation against the petitioner that he had misused the mobile phone in jail premises for committing any offence and that he had already been deprived of his right to avail furlough/parole for 5 years earlier, am of the considered opinion that the impugned order deserves to be set aside for the purpose of reconsideration of the case of the petitioner by the respondents.

Consequently, the writ petition is hereby allowed and the matter is remanded back to the Superintendent of Prison, District Prison, Karnal for

reconsidering the case of the petitioner, in accordance with law, within a period of 15 days from the date of receipt of certified copy of this order.

28.09.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No