

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18300 of 2018

Date of decision: September 25, 2018

Parvesh Kumar @ Shunty

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ravinder Bangar, Advocate for the petitioner.

Ms. Safia Gupta, AAG Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner is a life convict, presently lodged in Jagadhri Jail, Yamuna Nagar. He was tried in a case registered vide FIR No.89 dated 9.3.2008 under Sections 364-A, 377, 201, 34, 420, 411, 468, 471 IPC and 25 of the Arms Act, 1959 at P.S. Thanesar District Kurukshetra. Appeal filed by the petitioner was dismissed by this Court on 2.2.2017. The mother of the petitioner has applied to the Superintendent of the Jail for parole of the petitioner. Since the said application filed by the petitioner was not decided one way or the other, the petitioner has approached this Court for seeking a direction.

After notice, the respondents have filed reply in the Court today in which it is averred that the petitioner was convicted in another case bearing FIR No.556 dated 10.11.2007 registered under Sections 302, 148, 323, 324, 148, 212, 120-B IPC at P.S. City Thanesar, District Kurukshetra and was sentenced to life imprisonment by the Additional Sessions Judge, Kurukshetra

conviction and sentence was dismissed on 7.7.2015.

Learned counsel for the respondents has submitted that the petitioner falls within the category of hardcore prisoner in terms of Section 2 (aa)(i)(3) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') as the petitioner has been convicted and sentenced for committing the offence under Section 364-A IPC. She has also submitted that the petitioner was found in possession of a mobile phone in the jail premises in respect of which FIR No.93 dated 8.2.2017 under Section 42-A of Prisons Act at P.S.Thanesar, District Kurukshetra was registered which is pending trial. It is thus submitted that the petitioner is not entitled to be released on parole.

On the other hand, learned counsel for the petitioner has submitted that even if the petitioner falls within the definition of hardcore prisoner in terms of Section 2(aa)(i)(3) of the Act yet he has completed five years of sentence and therefore, he has become entitled for seeking parole/furlough. In regard to the jail offence, the trial is still pending and the petitioner is not convicted so far meaning thereby it is not established that the petitioner has been actually found in possession of mobile phone.

I have heard learned counsel for the parties and have perused the record with their able assistance.

Since there is no dispute that if a person is convicted for kidnapping for ransom under Section 364-A IPC then he would be termed as a hardcore prisoner in terms of Section 2(aa) (i)(3) of the Act. There are different provisions for the prisoners and hardcore prisoners for the purpose of granting them parole/furlough in the Act. A prisoner would apply for parole under Sections 3 and 4 of the Act but a hardcore prisoner has to apply under Section 5-A of the Act.

Section 5-A(2) of the Act, which is relevant in this case is

reproduced as under:

“Notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge:

Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment.”

Counsel for the petitioner has though submitted that the petitioner has completed five years of imprisonment even after his conviction but there is no custody certificate of the petitioner issued by the jail authorities from which this Court can find out about the period of custody of the petitioner during trial and after conviction.

Be that as it may, since it is submitted by counsel for the petitioner that the petitioner has completed more than five years of sentence after his conviction, he would be entitled to be considered for parole in terms of Section 5-A(2) of the Act. The question would arise then as to whether the petitioner has committed jail offence as it is provided in Proviso 5-A(2) of the Act that a hardcore prisoner cannot be allowed the benefit of parole/furlough after he has committed jail offence. The possession of a mobile phone in the jail premises is a jail offence in terms of Section 42 of the Prisons Act. There is only allegation against the petitioner because FIR has been registered against him but he has not been convicted in the trial in order to prove the allegations against him of having committed the jail offence.

Thus in my considered opinion, in the given facts and circumstances, the petitioner can be released on parole but at this stage, when the Court is not aware of the sentence period which he has completed after

conviction, a direction is issued to the District Magistrate, Kurukshetra to

verify the fact that the petitioner has completed five years of imprisonment or not. In case he is found to have not completed five years of imprisonment after conviction, the District Magistrate may not grant parole to him but if he is found to have completed five years of imprisonment then he would release the petitioner on parole for three weeks on his furnishing bail bonds to his satisfaction and is further directed to impose the necessary conditions upon the petitioner so as to ensure that he should surrender to the jail authorities after the completion of the period of parole.

September 25, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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