

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.25517 of 2018
Date of decision: October 9, 2018

Tara Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.Amit Khatkar, Advocate for the petitioner.

Mr.Saurabh Mohunta, DAG Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner was tried in a case registered vide FIR No.51 dated 1.3.2016 registered under Sections 342, 363, 366(A), 376(1) IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') at Police Station Agroha, District Hisar. The petitioner was convicted under Section 376(2)(f) IPC and Section 4 of POCSO Act and was sentenced for 10 years imprisonment vide order of conviction and sentence dated 26.9.2017. The petitioner has applied for parole in terms of Section 3(1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') to attend the marriage of his real brother which is now fixed for 10/11.10.2018 at his native place i.e. village Barar Khera, District Jind.

After notice, the respondents have filed reply in which the factum of marriage has been verified to be correct but it is argued that since the petitioner has been convicted under the POCSO Act i.e. for the offence of rape

of a girl who is below 16 years of age at the time of commission of offence, therefore, he would be termed as a hardcore prisoner in terms of Section 2(aa) (6) and 14 of the POCSO Act. However, counsel for the petitioner has submitted that provisions of Section 2(aa)(14) is not applicable because the conviction of the petitioner is not under Section 14 of the POCSO Act but the conviction is under Section 6 of the POCSO Act.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is merit in the submission made by the counsel for the petitioner because the Legislature has specifically provided the definition of hardcore prisoner in Section 2(aa) of the Act in which the prisoner who has committed offence under Section 14 of the POCSO Act is to be treated as hardcore prisoner. Since the petitioner has been convicted under Section 4 of the POCSO Act, therefore, he cannot be declared to be a hardcore prisoner.

In view thereof, the present petition is hereby allowed and the petitioner is ordered to be released on parole for a period of two weeks to attend the marriage of his real brother on furnishing surety bonds to the satisfaction of District Magistrate, Hisar who is further directed to impose necessary conditions in his order of release so as to ensure the return of the petitioner to the jail on completion of the period of parole.

October 9, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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