

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 28238 -2018 (O&M)
Date of decision: 07.12.2018

Ram Bilas

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Ravinder Bangar, Advocate for the petitioner
Mr.Ramesh Kumar Ambawata, AAG Haryana

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Petitioner has invoked the jurisdiction of this Court under Articles 226/227 of Constitution of India for issuing the writ in the nature of certiorari for quashing the speaking order dated 16/20.10.2018 passed by the Superintendent District Prison, Gurugram and sought mandamus for releasing the petitioner on agricultural parole for six weeks under Section 3 (1)(C) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

Earlier also, the petitioner has filed CWP No.26156 of 2018 but the same was disposed of with directions to the respondents to pass a speaking order. Now, a speaking order has been passed, whereby his prayer for parole has been rejected.

The State has filed the reply, which is taken on record.

I have heard learned counsel for the parties and have also carefully gone through the file.

State in the reply has taken a stand that the petitioner has undergone the actual sentence of 6 years 3 months 18 days, which, after deducting the parole, comes to 5 years 2 months 20 days and with remissions 5 years 9 months and 13 days. It was further stated that the petitioner falls in the category of hardcore prisoner under Section 2(aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013, as he was found using a Celphone with sim card inside jail premises. As per provisions of Section 2(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, a hardcore prisoner is entitled to temporary release or furlough only after he has completed 5 years of imprisonment and has not been awarded any major punishment by the Superintendent Jail, as judicially appraised by the concerned District & Sessions Judge. It is stated that respondent no.4 has also taken opinion from the Director of General of Prisons, Haryana for grant of agricultural parole for the land on Patta, who has opined that the convict cannot be released on agricultural parole for the land taken on Patta. Petitioner has already availed four weeks parole from 25.7.2018 to 23.8.2018 in the current year.

Even if, the stand of the respondents is taken into consideration, the petitioner has already completed more than five years of sentence. Therefore, even if he is a hardcore criminal, he is entitled to parole. The mere possession of Celphone is not a ground to decline parole.

Now, the question would arise as to whether for the land taken on Patta, agricultural parole can be declined and the order of the Superintendent District Prison, Gurugram dated 16/20.10.2018 deciding not to initiate parole of the said convict is sustainable in the eyes of law?

For this purpose, one has to go through Section 3(1)(C) of

Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which is reproduced as under:-

3. (i) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-Section (2), any prisoner, if the State Government is satisfied that-

(a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or

*(c) the temporary release of the prisoner is necessary for sloughing, sowing or harvesting or carrying on any other agricultural operation **on his land** or his father's undivided land actually in possession of the prisoner;*

The language of the aforesaid section shows that a prisoner can be released on parole for agricultural operations 'of his land'.

Now, the question would arise as to whether 'his land' means only the land owned by the petitioner or it includes the land on lease with him?

The purpose of the said agricultural parole is that the petitioner may cultivate the land, which is in his possession. Therefore, in my opinion, giving restrictive meaning that such parole can be allowed only for the purpose of the land which is actually owned by the convict or his family members will frustrate the very object of the said section. The term, 'his land' includes the land in his possession through it may not be owned by him. Even if, the convict has taken land on lease, he is entitled to cultivate the same. Therefore, agricultural parole for the land taken on lease by the

convict or his family members can be allowed.

It being so, the impugned order passed by the Superintendent District Prison, Gurugram dated 16/20.10.2018 is set aside. He is directed to initiate the parole case of the petitioner and send the same to the concerned authorities for taking decision. The Superintendent shall pass necessary orders within five days from the date of receipt of a certified copy of this order and thereafter, the concerned authority shall pass order within the time frame fixed by the instructions of the Government of Haryana.

Petition is accordingly allowed.

07.12.2018

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No