

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4754-2018

Date of decision: 15.06.2018

Varinder Singh @ Vicky

.. Petitioner

Vs.

State of Haryana and Ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Satish Saini, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of parole for agriculture purpose and for setting aside the order dated 30.10.2017 (Annexure P5) vide which the application of the petitioner was dismissed by Superintendent of Prison, District Prison, Karnal.

Counsel for the petitioner submits that the petitioner was convicted in FIR No. 140 dated 04.05.2011 under Sections 341/363/364/366-A/376 (2)(g)/302/201/34 IPC and 25 of the Arms Act by the Additional Sessions Judge-cum-Exclusive Court for Heinous Crimes Against Women, Kurukshetra and was sentenced to undergo life imprisonment and to pay a fine of Rs.70,000/- with a default clause.

The appeal filed by the petitioner i.e CRA-D-1108-DB-2014 is pending before this Court.

Counsel further submits that on earlier two occasions, the petitioner was granted parole, on account of sudden death of his mother and father. The petitioner, after availing parole granted by this Court, vide order dated 20.09.2017 for attending the *kriya* ceremony of his father who died on 11.09.2017, had surrendered before the jail authorities within time. Thereafter, the petitioner was again granted parole vide order dated 12.03.2018 to attend the *kriya* ceremony of his mother and again, after availing parole, he has surrendered before the jail authorities within the time given by this Court.

Counsel for the petitioner further submits that the petitioner has undergone 06 years, 06 months and 20 days of total sentence as on 16.11.2017.

Counsel for the petitioner further submits that the only reason given in the impugned order (Annexure P5), rejecting the parole of the petitioner, is that he was found in possession of a sim card and the jail authorities are calculating the period from the date of the second offence of possessing the mobile/sim card i.e. 12.04.2015 to 16.11.2017 and they are not calculating the actual sentence undergone by him as in that circumstances, he is entitled to parole. Counsel further relied upon the order dated 12.04.2018 passed in CWP-8565-2018 in which, in a similar circumstance, this Court while relying upon the judgment dated 07.12.2017 passed in CRWP-1374-2017, has held that mere possession of mobile phone in jail, cannot be a ground to deny the parole when there is no allegation that the convict has misused the phone either to blackmail some one or to demand ransom or for any other purpose for complicity in any other crime while being in jail.

Counsel further submits that there are no allegation that the petitioner has misused the mobile phone for any of the aforesaid purpose.

The Superintendent of Prison, District Prison, Karnal has filed the affidavit dated 16.11.2017 and a perusal of the affidavit shows that after availing the two paroles, granted by this Court, the petitioner has surrendered back in time and has never overstayed the period. A perusal of the affidavit further shows that the petitioner was found in possession of sim card/mobile phone in the jail premises, therefore, he can claim parole only if he has completed 05 years of imprisonment and he will be entitled to parole on completion of 05 years from the date of second offence i.e. when sim card was found in his possession i.e. from 12.04.2015. Therefore, the period of 05 years will be calculated from 12.04.2015 and the period of conviction which, as per the petitioner is more than 07 years cannot be taken into consideration. A perusal of affidavit further shows that there is no allegation against the petitioner that he has misused the mobile phone/sim card for any of the above stated purpose.

Learned State counsel, on the basis of the affidavit, has opposed the prayer for grant of parole on the ground that as per Section 2 (aa) (i)(5) of the Haryana Good

Conduct Prisoners (Temporary Release) Amendment Act, 2012, the petitioner being a hardcore prisoner is not entitled to parole as he was found misusing the sim/mobile phone in the jail premises.

After hearing, counsel for the parties, I find merit in the present petition. While relying upon the judgment of the Division Bench of this Court, in case CRWP-1374-2017, decided on 07.12.2017 and order dated 12.04.2018 passed in CWP-8565 of 2018, this petition is allowed and respondent No.3-Superintendent, District Jail, Karnal is directed to re-consider the case of the petitioner for releasing him on parole for four weeks as prayed for in view of observations made above.

This petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

15.06.2018.
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No