

CWP No.5587 of 2018 -1-

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

CWP No.5587 of 2018

Date of decision: August 10, 2018

Sanjay Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.R.K.Bangar, Advocate for the petitioner.

Mr.Saurabh Mohunta, DAG Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner, a life convict, presently lodged in District Jail, Yamuna Nagar, has prayed for a writ in the nature of mandamus to direct the respondents to release him on parole for four weeks so that he may be able to make arrangement for the admission of his children in School. The application was filed by the petitioner under Section 3(i)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act'). The said application has not been allegedly forwarded by the Jail Superintendent to the concerned authority for his report.

After notice, the respondents have filed reply in which it is averred that the petitioner was granted parole on 24.11.2009 for four weeks and was directed to surrender on 23.12.2009 but he absconded for a period of 5 years, 2 months and 19 days. Thereafter, he was arrested on 14.3.2015 and a case was registered vide FIR No.30 dated 22.1.2010 under Sections 8/9 of HGCP Act, P.S.City Jagadhari and one more FIR No.127 dated 5.3.2014 under Section 174-A IPC at Police Station City Jagadhari was registered against the petitioner in which he has been convicted and sentenced for the period already

undergone and in case FIR No.30 dated 22.1.2010, the petitioner has been convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of ₹1000/- vide order dated 3.9.2015. It is further averred that one more FIR No.365 dated 18.6.2016 under Section 42-A of Prisons Act, P.S.City Jagadhari was registered against the petitioner as he was found in possession of mobile phone in the jail. The petitioner is facing trial in case FIR No.1164 dated 24.7.2017 under Section 42 of Prisons Act, P.S.City Jagadhari which is pending before the Court of ACJM Yamuna Nagar as he is found in possession of another mobile phone in jail. The respondents have averred that the petitioner falls in the category of Hardcore prisoner in terms of the provisions of Haryana Good Conduct Prisoners' (Temporary Release) Amended Act, 2013.

Counsel for the petitioner has submitted that except for the aforesaid offence, there is no other allegation against the petitioner who is in dire need of parole for the purpose of making arrangement of the admission of his school going children.

I have heard learned counsel for the parties and have perused the record carefully.

There are two type of prisoners in the Act i.e. prisoner and hardcore prisoner. Prisoner is defined in Section 2(d) of the Act which means a person confined in prison or jail or other institution of like nature under a sentence of imprisonment for life or imprisonment by any court in India or the Court martial or any other authority exercising the power of a Criminal Court; Whereas hardcore prisoner is defined in Section 2(aa) of the Act which means a person-

(i) who has been convicted of -

- (1)robbery under section 392 or 394 IPC;
 - (2)dacoity under section 395, 396 or 397 IPC;
 - (3)Kidnapping for ransom under section 364-A IPC;
 - (4)Murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;
 - (5)rape with murder under section 376 read with 302 IPC;
 - (6)rape with a woman below sixteen years of age;
 - (7)rape as covered under section 376-A, 376-D or 376-E IPC;
 - (8)serial killing i.e. murder under section 302 IPC is two or more cases in different First Information Reports;
 - (9)murder under section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case;
 - (10)lurking house trespass or house breaking where death or grievous hurt is caused under section 459 or 460 IPC;
 - (11)either of offence under sections 121 to 124-A IPC;
 - (12)immoral trafficking under section 3,4 or 5 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) involving minors or under section 366-A, 366-B, 372 or 373 IPC;
 - (13)
 - (14)offence under section 17(c) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or
 - (15)offence under section 14 of the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012);
- (ii)who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC, except the offences covered under Clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment atleast for a period of twelve months:

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded:

Provided further that if a conviction has been set-aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; of

- (iii)who has been sentenced to death penalty; or
- (iv)who has been detected or using cell phone or in possession of cell phone/SIM card inside the jail premises; or
- (v)who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act:

Provided that the State Government may, by notification include any offence in the list of offences mentioned above.

Explanation.- For the purposes of this section, “IPC means the Indian Penal Code, 1860 (Central Act 45 of 1860).

Section 3 of the Act deals with the temporary release of prisoners on certain grounds. Section 5A of the Act provides the temporary release of hardcore prisoners.

Section 3 and Section 5A of the Act are reproduced as under:

3(1)- Temporary release of Prisoner on certain grounds : - 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 ploughing, 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; or (d) it is desirable to do so for any other sufficient cause. (2)The period for which a prisoner may be released shall be determined by the State Government so as not to exceed- (a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks; (b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and (c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks; Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks. (3) The period of release under this section shall not count towards the total period of the sentence of a prisoner. (4) The State Government may, by notification, authorize any officer to exercise its powers under this section in respect of all or any other ground specified thereunder.

“Section 5A-Special Provisions for temporary release of hardcore prisoners- (1) Notwithstanding anything contained in sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough.

Provided that a hardcore prisoner may be released on temporary basis to attend the marriage of his child or sibling, or death of his grand parent, parent, grand parent -in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort for a period of forty eight hours, to be decided by the concerned superintendent of Jail.

Provided further a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety six hours and for the marriage of his son for seventy two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.

(2) Notwithstanding anything contained in sub section (1) a committed hardcore prisoner who has not been awarded penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded 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.

Provided further that if the prisoner so released under this sub section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

The petitioner has applied for temporary release under Section 3 (1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 in which it is provided that a prisoner can be granted parole if it is desirable for any other sufficient cause. The sufficient cause is defined in Rule 8(i) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for short

`the Rules') which reads as under:

8(i)- admission in school/colleges/professional institutions of the dependents of the convict;

One of the sufficient cause as per Rule 8 (i) of the Rules 2007 is admission in school/colleges/professional Institutions of the dependent. Therefore, definitely the case of the petitioner would fall within the definition of Section 3(i)(d) of the Act if he is not a hardcore prisoner. The procedure for grant of parole is provided in Rule 3(2) of the Rules which provides that if an application is filed before Superintendent Jail for release of parole, he would make the report to the District Magistrate, who would further send his recommendation to the Director General (Prisons)/Commissioner of the Division for grant of parole. Since Clause (2)(aa) (iv)(v) says that a person who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act would be a hardcore prisoner, therefore, the petitioner would be termed as a hardcore prisoner for seeking his release on parole. The petition thus filed by the petitioner is not maintainable as it has been filed under Section 3(i)(d) of the Act and is dismissed on this ground only. However, liberty is granted to file appropriate application, in case he still desires to be released on parole, in accordance with law.

August 10, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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