

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7739 of 2018

Date of decision: October 1, 2018

Balraj

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. A.S.Trikha, 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.286 dated 25.9.2001 for the offence committed under Sections 302, 307, 323, 148 and 149 IPC at Police Station Sadar Rohtak. He was convicted and sentenced for life imprisonment by the trial Court in the year 2003 and his appeal against the conviction and sentence was dismissed. The petitioner has applied for parole under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') for the repair of his house. Notice was issued in the petition to which reply is filed. It is averred in the reply that the petitioner was earlier released on parole on 21.4.2004 for house repair. He was to surrender on 20.5.2004. However, the petitioner absconded from parole and was ultimately arrested by the police on 28.5.2016 after he overstayed for twelve years and nine days.

Counsel for the respondents has submitted that as per Rule 10(ii) of Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for

short 'the Rules') "if a convict overstays 30 days or more of his

parole/furlough, his case shall not be entertained by the Superintendent of Jail two years from the date of surrender/arrest. He has also submitted that the petitioner has become a hardcore prisoner by overstaying the period of parole and has referred to Section 2(a)(v) of the Act.

Counsel for the petitioner, however, submits that even if Rule 10 (ii) of the Rules is applied, the period of two years has come to an end on 28.5.2018 and therefore, the petitioner is entitled to parole. As regards the argument of the respondents that the petitioner has become a hardcore prisoner it is submitted that even if the petitioner has become hardcore prisoner, he would be entitled to parole.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is merit in the argument of the petitioner. Even if the first argument of the counsel for the respondent-State is rejected that the petitioner has completed two years after his surrender, the fact would remain that he has become a hardcore prisoner. The Act regulates the life of the jail inmates after their conviction and sentence in jail. The Act recognises two types of prisoners in jail i.e. the convicts and under trials. The convicts are further divided into prisoner and hardcore prisoner. The prisoner is defined in Section 2(d) of the Act which means that 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 powers of a Criminal Court whereas hardcore prisoner is defined in Section 2(aa) of the Act.

Section 2(aa) deals with the definition of hardcore prisoner, which has been brought by the amendment in **The Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013** which reads as under:

(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)offence under section 17(c) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or
 - (14)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)

The prisoner can apply for temporary release on parole in terms of Section 3 of the Act and for furlough under Section 4 of the Act whereas a hardcore prisoner can apply for parole or furlough in terms of Section 5-A. The petition has been filed for release of the petitioner in terms of Section 3(i)(d) of the Act which deals with any other sufficient cause. Sufficient cause is defined in Rule 8 of the Rules which includes the house repair. The question would be as to whether application filed by the petitioner under Section 3(1)(d) of the Act as prisoner can be considered and if the petitioner is labelled as hardcore prisoner whether he has to file application under Section 5A of the Act? In my considered opinion, the treatment for a prisoner and hardcore prisoner is altogether different in the Act. The prisoner is not required to be taken out in the armed escort at the time of his parole. The period prescribed for the release of hardcore prisoner is lesser than the period of the prisoner. The purpose is very obvious as it is suggested by the name of the Act itself i.e. Good Conduct "Prisoners". The petitioner has not shown his good conduct in jail as he absconded and was ultimately arrested on 28.5.2016 therefore, labelled as hardcore prisoner. The petitioner if so advised, may file application under Section 5A of the Act but insofar as the present application under Section 3(1)(d) of the Act is concerned, it is not maintainable because the petitioner is no more a prisoner.

In view of the above, the present petition is hereby dismissed.

October 1, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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