

CWP No.8912 of 2018 -1-

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

CWP No.8912 of 2018

Date of decision: August 29, 2018

Ravi @ Ravinder

...Petitioner

Versus

The 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)

This petition is directed against the order passed by the Deputy Commissioner, Gurugram dated 9.1.2018 by which application filed by the petitioner for seeking furlough has been rejected.

In brief, the petitioner had applied for furlough under Section 4 (1)(2) of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act'). He is lodged in District Jail, Gurugram suffering life imprisonment in a case registered vide FIR No.18 dated 5.2.2012 under Sections 302/148/149 IPC and Section 25 of Arms Act at Police Station Baund Kalan, Bhiwani, having been convicted and sentenced by the Additional Sessions Judge, Bhiwani on 31.3.2016. According to the respondents, there was another FIR No.208/2009 registered against the petitioner under Sections 379/411 IPC at P.S. Sushant Lok, Gurugram. The petitioner was tried in that FIR and vide order dated 18.3.2017 passed by

ACJM, he was convicted and has undergone the sentence. There was yet another FIR against the petitioner bearing No.108/09 under Sections 279/337/338 IPC at P.S.Dadri in which he was acquitted on 20.12.2012 by the JMIC Charkhi Dadri. The petitioner had earlier filed Criminal Writ Petition No.1377 of 2017 for seeking parole. The said petition was disposed of on 22.11.2017 with a direction to ensure that the claim of the petitioner be considered within a period of one month. The case of the petitioner was ultimately considered and has been rejected vide the impugned order dated 16.1.2018 on the ground that the petitioner falls within the definition of Hard core prisoner in terms of Section 2(aa)(ii) of the Act as he has been undergoing life imprisonment since 7.3.2012 and before completion of the period of five years of the first conviction, he has been convicted again for another offence under the case registered vide FIR No.208/09 under Sections 379/411 IPC at P.S. Sushant Lok, Gurugram on 18.3.2017.

Counsel for the petitioner has submitted that there is a misrepresentation on the part of the respondents as the petitioner has undergone the sentence in FIR No.208/09 registered under Sections 379/411 IPC.

On the other hand, counsel for the respondents has submitted that there is no error in the impugned order as the petitioner has not completed the period of five years after his conviction dated 31.3.2016 and is thus not entitled for seeking parole in terms of Section 4 of the Act.

I have heard learned counsel for the parties and have perused the record with their able assistance.

In this case, the facts are not in dispute but the only issue which

is to be decided is about the import of Section 2(aa) (ii) of the Act to hold that the petitioner is a hardcore prisoner?

The Act defines both prisoner and hardcore prisoner.

“Section 2(d) of the Act deals with the definition of prisoner 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 powers of a Criminal Court;

whereas 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)
 - (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 2(aa) (ii) of the Act provides that a prisoner would be deemed to be a hardcore prisoner who has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII and XVII of IPC during the period of five years immediately before his conviction. Chapter XII of the IPC deals with the offences relating to coin and Government Stamps and Chapter XVII deals with offences against property.

The petitioner was convicted under Section 379 read with Section 411 IPC. Section 379 IPC is the punishment for theft and Section 411 IPC deals with dishonestly receiving stolen property. Both these provisions are the part of Chapter XVII. According to Section 2(aa) (ii), in order to hold a person to be a hardcore prisoner, it is necessary that he should have undergone imprisonment atleast for a period of 12 months for

the commission of one or more offences as mentioned in Chapter XII and XVII of IPC that too five years before his conviction in a case. In the present case, however, conviction of the petitioner is under Chapter XV which deals with offences affecting the human body i.e. the offence of murder under Section 302 IPC which is prior on time on 16.3.2016 and the offence regarding the property which falls in Chapter XVII of IPC is subsequent. Therefore, in my considered opinion, provision of Section 2(aa) (ii) of the Act has been wrongly interpreted by the respondents in declaring the petitioner a hardcore prisoner.

Thus, in view thereof, the present petition is hereby disposed of with a direction to the respondents to reconsider the case of the petitioner in the category of prisoner and decide the same as early as possible but preferably within a period of 15 days on receipt of the certified copy of this order.

August 29, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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