

121
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1219-2019 (O&M)
Date of Decision:05.02.2019

JOGA SINGH

..Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Ms. Tanushree, DAG, Haryana.

HARINDER SINGH SIDHU, J. (ORAL)

CM-1827-2019

This application has been filed for pre-poning the date of hearing of the main case from 12.02.2019 to early date.

Notice in the application.

On asking of the Court, Ms. Tanushree, DAG, Haryana accepts notice.

In view of the averments made in the application, present application is allowed. With the consent of the parties, the case is taken up for hearing today itself.

CWP-1219-2019

Present petition has been filed for quashing/setting aside the

order dated 03.01.2019 passed by the Commissioner, Hisar Division, Hisar, whereby the application of the petitioner for grant of parole to enable him to attend his real sister's marriage has been declined .

The petitioner is undergoing life imprisonment in case FIR No.34 dated 03.05.2015 under Sections 120-B, 148, 149, 302 of IPC, Police Station Pundri, District Kaithal consequent upon his conviction in the said case vide judgment dated 31.01.2017. His appeal bearing No. CRA-D-176-DB-2017 is pending adjudication before this Court .

The petitioner had submitted an application for release on parole on the ground that his sister's marriage is fixed for 11.02.2019 and the presence of the petitioner being eldest son is necessary to perform various ceremonies associated with the marriage. The case of the petitioner for release on parole for four weeks was recommended by the District Magistrate, Kaithal on 19.12.2018. However, the Commissioner vide impugned order dated 03.01.2019 rejected the same.

Reply by way of affidavit of Sanjeev Patter, Superintendent, Central Jail-II, Hisar has been filed, as per which a Sim card was recovered from the petitioner on 30.01.2017, whereupon case FIR No.05 dated 03.01.2017 under Section 42 of the Prisons Act was registered at Police Station City Kaithal. The Chief Judicial Magistrate, Kaithal convicted and sentenced him to the period already undergone and pay a fine of Rs.5,000/-. Reference has been made to the provisions of sub-section (2) of Section 5 A of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013, which defines a 'hardcore prisoner' as under:-

“ Hardcore Prisoner ” means a person:-

- (ii) *Who has been convicted of-*
 (iv) *who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises.*

Vide Haryana Good Conduct Prisoner (Temporary Release) Amendment Act 2015, the Act was amended and for sub-section (2) of Section 5A of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act 1988, following sub-section was substituted, namely:-

“(2) Notwithstanding anything contained in sub-section (1), convicted hardcore prisoner, who has not been awarded death penalty may be entitled for temporary release or furlough only if he has completed five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially apprised by the concerned District and Sessions Judge;

Provided that the five year imprisonment period shall not include imprisonment during trial period for more than two years while counting five years of imprisonment.”

It is stated that the petitioner falls in the category of 'hardcore prisoner' under the aforesaid Act and is not entitled for parole.

Clearly, the sole ground for denial of parole to the petitioner is that he stands convicted under the Prisoners Act for possession of a SIM. This Court has on various occasions considered this question. In **CWP-4754-2018** titled as **Varinder Singh @ Vicky vs. State of Haryana and others**, decided on 15.6.2016, this Court considered an identical question. It relied upon the judgment dated 07.12.2017 passed in CRWP-1347-2017, wherein it was 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.

In the present case also, there is no allegation that the SIM/Mobile Phone was misused. In view of the above, the impugned order cannot sustain. The petition is accordingly allowed. The impugned order is set aside.

Ordinarily, this case would have been remitted to the respondents to reconsider the case of the petitioner without taking into account his possession of the Mobile Phone/SIM.

However, considering the urgency of the situation and that the marriage of the sister of the petitioner is fixed for 11.2.2019, it is directed that the petitioner be released on parole for one week i.e. from 08.02.2019 to 15.02.2019 subject to his furnishing surety bonds to the satisfaction of the District Magistrate. He will surrender before the Jail Authorities on or before 5.00 PM on 15.02.2019.

Copy of this order be supplied to learned counsel for the petitioner under the signatures of the Special Secretary of the Bench.

February 05, 2019
Jyoti-IV

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned: Yes Whether Reportable:

Yes/No