

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

Civil Writ Petition No.1405 of 2019

Date of decision: February 25, 2019

Deepak

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Ramesh K. Ambavta, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order/communication of the Jail Superintendent, District Jail, Gurugram dated 09.01.2019 (Annexure P-1) whereby the application of the petitioner for release on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

As stated in the petition, the petitioner is undergoing rigorous imprisonment for life in case FIR No. 446 dated 21.11.2013, under Sections 302, etc. IPC and Section 25 of the Arms Act registered at Police Station, Badshapur, District Gurugram. after his conviction by the Additional Sessions Judge, Gurugram.

The wife of the petitioner submitted an application to the Jail Superintendent, District Jail, Gurugram for grant of parole for the purpose of admitting his children in school. The application was rejected by the

impugned order. Thus, the present petition.

In the reply filed by the Superintendent, District Jail, Gurugram it is stated that the petitioner has already availed 15 days school admission parole from 09-04-2018 to 25-04-2018 in compliance with the order of this Court in CWP No.5594 of 2018. The petitioner has further availed 4 weeks parole for agricultural purposes from 22-10-2018 to 20-11-2018 in compliance with the orders in CWP No.22555 of 2018. It is also stated that on 31.10.2017 a mobile phone was recovered from the petitioner for which he was awarded a major jail punishment of one month separate confinement in the Security Ward and the same was judicially appraised by the District and Sessions Judge, Gurugram vide office letter No. 735 dated 24.01.2018. In furtherance to this case FIR No.295/17 under Section 42 of the Prison Act, Police Station Bhondsi, Gurugram was also registered which is pending. The petitioner is on bail in the said case. Therefore, the petitioner is covered under the definition of 'hardcore prisoner' as per the provision contained in para 2(aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013, as per which a person who has been detected of using cell phone or in possession of Cell Phone/Sim Card inside the jail premises is a 'hardcore prisoner'. As per Sub-section 2 of Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, such a prisoner would be entitled for release only after he has completed five years imprisonment. Accordingly, the petitioner is not eligible to be released on parole.

The order declining parole to the petitioner cannot sustain as the ground mentioned therein is not made out in the facts of this case.

A Division Bench decision of this Court in **Sunil @ Shilu vs. State of Haryana and others**, Criminal Writ Petition No.1299 of 2015 decided on 27.09.2016 considered the question of categorisation of a prisoner as 'hardcore' on account of recovery of mobile phone/sim card in great detail and held that till the time the prisoner is not convicted of the said charges under Section 42 of the Prisons Act he cannot be labelled as a 'hard core prisoner' within the meaning of Section 2 (aa) of the Act so as to disentitle him for consideration for temporary release on parole.

As the petitioner has not yet been convicted for the offence under Section 42A of the Prisons Act, therefore, he cannot be denied parole on this ground.

Accordingly, this petition is allowed. The impugned order is set aside. The respondents are directed to release the petitioner on parole for a period of three weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/Competent Authority. The petitioner shall surrender before the Jail authorities on the expiry of three weeks of his release.

February 25, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No