

CWP-4915-2019

[1]

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

CWP No.4915 of 2019 (O&M)

Date of decision: February 26, 2019

Baljinder Singh @ Chhotu

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Rajesh Tushar, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition praying for directions to release him on parole to enable him to attend the marriage of his younger brother - Arjun, which is fixed for 27/28.02.2019 and to perform other rites and rituals in connection with the same.

The petitioner is undergoing rigorous imprisonment for ten years in case FIR No.369 dated 17.07.2016 under Sections 323, 365, 506 IPC and under Section 6 of the POCSO Act, Police Station Shahabad, District Kurukshetra after his conviction by the learned Additional Sessions Judge, Kurukshetra.

The petitioner had submitted an application on 13.2.2019 along with the 'Marriage Card' to the Superintendent, Central Jail, Ambala – respondent No.2 for grant of parole to enable him to attend the marriage of his brother, which is fixed for 27/28.02.2019. As no decision was taken on the application, he filed the

Instant petition.

Notice of motion was issued. In response thereto, learned State counsel has placed on record the reply by way of affidavit of Vishal Chhibber, Dy. Superintendent, Central Jail, Ambala. It is stated that on 23.9.2018, one mobile phone, one SIM card along with battery was recovered from the possession of the petitioner and a case FIR No.945 under Section 42 of the Prisons Act was registered at Police Station Thanesar against the petitioner. Accordingly, the petitioner falls under the 'hardcore criminal' category and is thus not entitled to parole till he completes five years of imprisonment after such recovery.

The mere fact that a mobile phone was recovered from the petitioner and thus, he falls in the category of 'hard core prisoner' cannot be considered a valid ground to deny parole to him. also cannot sustain.

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 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 It was observed:

“Section 2 (aa) of the Act defines 'hardcore prisoner'. Clause (iv) relates to a person detected with a cell phone etc. being termed as a 'hard core prisoner'. The said provision reads as under:-

“2. Definitions.- In this Act, unless the context otherwise, requires,-

xxx xxx xxx

(aa) “hard core prisoner” means a person,-

xxx xxx xxx

(iv) who has been detected of using cell phone or in possession

of cell phone/SIM card inside the jail premises;”

The question, therefore, that requires consideration is, whether on mere detection of a cell phone can a prisoner be declined temporary release on parole or whether the same is subject to his guilt being established and proved and only in that eventuality the parole can be declined.

During the course of hearing, learned counsel for the petitioner has submitted copy of the order dated 28.10.2015 passed by the learned Judicial Magistrate First Class, Sonipat in terms of which the petitioner - Sunil Kumar has been granted bail in the aforesaid case FIR No. 293 dated 11.06.2012 registered at Police Station City Sonipat for the offences under Sections 120-B and 201 IPC, besides, Section 42 of the Prisons Act. Therefore, the objection of the State that the prisoner had not been granted bail in the said case/FIR relating to detection of mobile phone no longer survives.

Section 42 is under Chapter X of the Prisons Act. It is under the heading 'Offences in Relation to Prisons'. Section 42 of the Prisons Act reads as under:-

“42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners. – *Whoever, contrary to any rule under Section 59 introduces or removes or attempts by any means whatsoever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner, outside the limits of a prison any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicates or attempt to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or*

to fine not exceeding two hundred rupees, or to both.”

The petitioner is admittedly facing trial in the case under Section 42 of the Prisons Act as also under Sections 120-B and 201 IPC.

A presumption of innocence is available to such an accused like the petitioner who is facing trial in a case under Section 42 of the Prisons Act as also under Sections 120-B and 201 IPC. It is a fundamental principle of criminal jurisprudence that every person accused of an offence is presumed to be innocent unless he is proved guilty and convicted of the charges that are alleged against him. A right of a fair trial is available to a person under going imprisonment as well as an innocent person. An accused is to be presumed innocent until proved to be otherwise in a fairly conducted trial. Therefore, at this stage to decline temporary release on parole to the petitioner would amount to pre-judging the guilt of the petitioner, which is yet to be established and proved. It has still to be proved by the prosecution in the pending trial that a mobile phone had been detected from him. To hold that it had been detected would be quite iniquitous, besides, being improper. In other words, the guilt of the accused can only be said to be established on his conviction by a Court of competent jurisdiction and the same cannot be pre-judged on mere allegations of the charges that have been framed.

Therefore, if a prisoner is not convicted of the said charges, 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.

Keeping in view the aforesaid position, it would be just and expedient that the competent authority considers the agriculture parole case of the petitioner without the disability of his being termed as a ‘hardcore prisoner’ as the charge in respect of detection of a mobile phone has not yet been proved and established.

In the light of above, this objection raised by the respondents in

granting parole to the petitioner cannot sustain.

Ordinarily, this case would have been remitted to the respondents to reconsider the case of the petitioner without taking into consideration the objection of 'recovery of mobile from the petitioner'.

However, considering the urgency of the situation and that the marriage of the younger brother of the petitioner is fixed for 27/28.02.2019, it is directed that the petitioner be released on parole for two weeks i.e. from 27.02.2019 to 14.03.2019 subject to his furnishing surety bonds to the satisfaction of the CJM/Duty Magistrate concerned. He will surrender before the Jail Authorities on or before 5.00 PM on 14.03.2019.

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

February 26, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No