

CWP-29478-2018

[1]

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

**CWP No.29478 of 2018 (O&M)
Date of decision: February 28, 2019**

Rajesh

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Saurabh Dalal, Advocate assisted by
Mr. Gaurav Bakshi, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent of Prison, District Prison, Jhajjar dated 26.10.2018 (Annexure P-3) 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 agriculture parole.

The petitioner is undergoing imprisonment for life in case FIR No.9 dated 11.1.2008 under Section 302, 323, 325, 148 and 149 IPC, Police Station Sadar Bahadurgarh, District Jhajjar after his conviction by the Additional Sessions Judge, Jhajjar. His appeal bearing No.CRA-D-45-DB of 2011 is pending before this Court.

The petitioner submitted an application to respondent No.2 - Superintendent of Prison, District Prison, Jhajjar for grant of parole for agriculture

purposes. Respondent No.2 stating that a mobile phone was recovered from the

petitioner in jail on 9.9.2017 and thus, he falls in the category of 'hardcore prisoner', rejected the request for parole.

In the written statement, it has been stated that on 9.9.2017 a mobile phone was recovered from the petitioner, whereafter, FIR No.796 dated 9.9.2017 under Section 42A Prisons Act was registered against him. He was awarded punishment of stoppage of interview for one month and to be kept in Security Ward for security reason. The same was judicially appraised by the District and Sessions Judge, Jhajjar vide order dated 29.9.2017. 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.

Learned counsel for the petitioner has argued that the grounds for rejection are baseless. Earlier also, the application for parole filed by the petitioner was rejected on the same ground that he was found in possession of mobile phone regarding which FIR No.796 dated 9.9.2017 under Section 42A Prisons Act was registered. The petitioner challenged the aforesaid order by filing CWP No.15299 of 2018, which was allowed and he was released on parole w.e.f. 15.7.2018 to 15.8.2018. He had surrendered on time. There is no complaint or allegation that he misused the concession of parole.

The question whether mere possession of a mobile phone can be a ground for denial of parole has been considered by this Court in various cases. A Division Bench 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 six 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 six weeks of his release.

February 28, 2019

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No