

CWP No.29604 of 2018

[1]

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

CWP No.29604 of 2018 (O&M)

Date of decision: 5.2.2019

Harpreet@ Minta

...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. Sanjay Vashisth, AAG, Haryana

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent, District Prison, Gurugram dated 06.11.2018 (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.

The petitioner is undergoing life sentence in case FIR No.77 dated 25.3.2014, under Sections 302, 201 and 120-B IPC and 25 of the Arms Act, Police Station Ballabgarh, District Faridabad after his conviction by the Additional Sessions Judge, Faridabad. His Criminal Appeal No.D-416-DB of 2018 is pending before this Court.

The petitioner submitted an application to the Superintendent, District Prison, Gurgaon for grant of parole to look after his mother, who is stated to be

suffering from backbone pain for which surgery is required. Doctor has given

opinion in this regard. The report and opinion of the Doctor is annexed as Annexure P-2.

In the impugned order, it has been stated that as a mobile phone was recovered from the petitioner during confinement in prison on 30.5.2018 and Judicial Appraisal for the same was approved by the District and Sessions Judge, Gurugram vide its office letter dated 04.08.2018, therefore, as per Section 2(aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, the petitioner falls under the category of hardcore prisoner. His case for parole was not recommended.

In the reply filed on behalf of the respondents it has been stated that the petitioner has not completed one year of imprisonment after conviction as required under Rule 4(1) of the Haryana Good Conduct Prisoners(Temporary Release) Rules, 2007. It is further stated that a mobile phone was recovered from the petitioner and he was awarded major jail punishment of one month separate confinement in the Security ward and Judicial Appraisal for the same was approved by the learned District and Sessions Judge, Gurugram vide their office letter No.6863 dated 4.8.2018. A case u/s 42 of the Prisons Act has been registered against him which is pending. The petitioner is on bail in that case since 20.11.2018. Thus, the petitioner is covered under the definition of 'Hardcore Prisoner' under Para 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act as per which Hardcore Prisoner means “a person who has been detected of using cell phone or in possession of Cell Phone/Sim Card inside the jail premises.” The reply reads:

“ ”

That, further the Sub-Section 2 of Section 5 A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 reads as under (Enclosed as Annexure-R4):-

“A convicted hardcore prisoner, who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any minor or major penalty by the Superintendent of Jail, as Judicially appraised by the concerned District and Sessions Judge

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

That, since the petitioner is covered under the category of Hardcore Prisoner and has not completed the requisite imprisonment period, hence the petitioner is not eligible to be released on any kind of parole.

7. That, as per the Director General of Prisons, Haryana, Sector-14, Panchkula letter No. 22999-23018/DGP/Jail/2016/G.1 dated 06-07-2016, if any prisoner found of using Mobile Phone or Sim in the Jail Premises and a case was registered against the convict U/s 42 (A) Prisons Act then he will not be eligible for parole/furlough until unless he will be acquitted in that case. The copy of the Director General of Prisons, Haryana letter is attached herewith as Annexure-R5.”

Both the grounds for denying parole to the petitioner are without merit.

The reliance by the respondents on Rule 4 of the 2007 Rules to deny parole to the petitioner cannot sustain. A Division Bench of this Court in CRWP No.677 of 2014 '**Deepak Vs. State of Haryana and others** (decided on 03.06.2014), held that the restriction of one year of imprisonment after conviction

to be eligible for temporary release had been imposed by Rule 4 of the 2007 Rules and it could not supersede the substantive provisions of the Act, which contained no such restriction. To the same affect is Division Bench judgment of this Court in **Aman alias Kala vs. State of Haryana and others**, 2017 (3) RCR (CrI) 279.

The other ground to deny parole that a mobile phone was recovered from the petitioner and thus, he falls in the category of 'hard core prisoner', 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, the impugned order cannot sustain.

Accordingly this petition is allowed. The impugned order is set aside.

Respondents are directed to re-consider the case of the petitioner. The fact that he

has not completed one year after conviction and that a mobile phone was recovered from his possession and he is being tried for offence under Section 42 of the Prisons Act would not taken as grounds to deny parole to him. It is expected that a decision would be taken expeditiously preferably within a period of two weeks of receipt of certified copy of this order.

February 05, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No