

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.30060 of 2018

Date of Decision: 10.09.2019

Saddam

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Susheel Gautam, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G. Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. Prayer in this petition is for a writ in the nature of certiorari for quashing the impugned order dated nil (P-2) passed by the Superintendent of Prison, District Prison, Karnal whereby benefit of furlough to the petitioner has been denied. It is also prayed consequentially that a writ in the nature of mandamus be issued directing the respondents to grant the benefit of furlough to the petitioner for a period of two weeks to meet his family in view of Section 4 (1) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

2. The petitioner has been convicted and sentenced to life imprisonment under Sections 302, 201, 120-B read with Section 34 of IPC in FIR No.19 dated 27.01.2015, registered at Police Station G.R.P. Panipat, District Panipat. Criminal appeal against the said conviction order filed by the petitioner is pending in this Court.

3. Earlier the petitioner filed CWP No.10876 of 2018 challenging

the rejection of his application for furlough on the ground that the petitioner would fall in the category of 'hardcore prisoner' in view of Clause 2 (aa) (i) (9) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 in which it is provided that "*murder under Section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case*".

4. The aforesaid writ petition was allowed by this Court on 07.09.2018 with the following directions:-

"I have heard learned counsel for the parties and after perusal of record, am of the considered opinion that there is an error in the approach of the respondents in reading Section 2(aa)(i) of the Act to hold the petitioner to be a 'hardcore prisoner'. Although language used by the legislature in Section 2(aa)(i)(9) of the Act is that "if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case" but it does not mean that mere allegations would hold the prisoner to be a contract killer until and unless a finding in that regard is recorded in the judgment of the case. The reason is obvious because there is a lot of difference between a 'prisoner' and 'hardcore prisoner', who are separately defined in Section 2(d) and 2(aa)(i)(9) of the Act, respectively. The prisoner has a right for seeking a temporary relief of furlough/parole under Sections 3 & 4 of the Act but the case of a 'hardcore prisoner' is dealt with in terms of Section 5A of the Act. Therefore, it is hereby held that it is not merely the facts mentioned in the judgment of the case would declare a prisoner as a 'hardcore prisoner' but there should be a categorical finding in the judgment of the case on the basis of the appreciation of facts that the murder has been committed by the offender as a contract killer."

5. In purported compliance of the above directions, the Superintendent of Prison, Karnal- respondent No.4 again rejected the case of the petitioner on the same ground that the petitioner has been convicted for

‘contract killing’ which falls in the category of ‘hardcore prisoner’. Vide order dated 20.08.2019, this Court called respondent No.4 personally to explain how he has passed the order rejecting the case of the petitioner despite directions dated 07.09.2018 issued by this Court. On 22.08.2019, respondent No.4 appeared personally, when this Court passed the following order:-

“Mr.Sher Singh, Superintendent of Prison, District Prison, Karnal, is present in Court. He apologises for attempting to virtually overruling the judgment and order dated 07.09.2018 passed by this Court in CWP No.10876-2018, in the case of petitioner himself.

This is a clear case of overreach, contempt and interference in the administration of justice. The matter is viewed seriously by this Court. Before any clemency is shown or apology is considered, the view of the Government is deemed necessary.

In the circumstances, Chief Secretary, Haryana, would look into the conduct of Mr.Sher Singh, Superintendent of Prison, District Prison, Karnal, in passing the order dated 15.10.2018 and whether any disciplinary action deserves to be taken against him.

Let the view of the Chief Secretary, Haryana, through his nominee, be placed on the record of this case on the next date of hearing.

Adjourned to 10.09.2019.”

6. It is submitted that though the impugned order was passed in compliance of the directions dated 07.09.2018 issued in the aforesaid writ petition but it does not find mention therein. Reply by way of affidavit dated 10.01.2019 was also filed by Sher Singh, Superintendent of Prison on behalf of respondents in this petition. There is not even a whisper in the reply about the ground of rejection i.e. ‘hardcore prisoner’ taken in the impugned order.

In para 3 of the preliminary submissions, it is stated as under:-

“That the parole case of the petitioner has been initiated by the answering respondent and forwarded to the respondent No.3 i.e. District Magistrate,

Sonipat and a copy to respondent No.2 i.e. Commissioner, Karnal Division, Karnal vide this office letter No.17898-99 dated 26.12.2018. The parole case of the petitioner is under process at the level of District Magistrate, Sonipat.”

Further, in reply to para 4 on facts, it is mentioned: *“that the first part of the contents of para No.4 of the petition is denied for want to knowledge in reply to the rest of the Para, it is submitted that the furlough case of the petitioner has already been initiated by the answering respondent.”*

7. Today, learned State counsel has produced a letter dated 06.09.2019 addressed from the Additional Chief Secretary to Government, Jails Department, Haryana to the Advocate General, Haryana. The same is taken on record. Mr. Mohunta states that the matter has been examined and it has been deemed appropriate to issue show cause notice to Sher Singh, Superintendent, District Jail, Karnal calling upon him to submit his explanation in writing about his conduct as mentioned in the interim order dated 22.08.2019 so that the matter may be placed before the authority to form a view about his conduct as to whether disciplinary action deserves to be taken against him. Mr. Mohunta further submits that reply of the Superintendent is awaited. This satisfies the anxiety of this Court in an obvious and contumacious attempt to tinker with the orders of this Court. Further action be taken as per law.

8. There is no report in the impugned order or the reply exists that the release of the petitioner on furlough would involve breach of the security of the State or he would pose a danger to society. The Gram panchayat has also recommended the case of the petitioner for furlough certifying that Gram Panchayat and residents of village have no objection if he may be

released on furlough. Proof of which has been placed on record as Annex P-

9. Having regard to the fact that there is no complaint against the petitioner in jail, his conduct in jail is satisfactory and his reports are good and taking into account the directions issued by this Court in the earlier petition, it is deemed appropriate to grant the benefit of furlough to the petitioner for a period of two weeks.

10. In view of the above, the petition is allowed. The impugned order dated nil (P-2) is quashed. The petitioner is granted furlough for two weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required in the Jail Manual toward the ends of securing the presence of the petitioner in jail after the period of furlough, is over and done with and the temporary release is not misused.

11. Ordered accordingly.

10.09.2019

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**(RAJIV NARAIN RAINA)
JUDGE**