

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

**CWP-30534-2018 (O&M)
Date of decision : 8.7.2019**

Naresh Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Randeep S. Dhull, Advocate for the petitioner.

Mr. Sandeep Vashisth, DAG, Haryana.

KULDIP SINGH, J.

Petitioner has impugned the order dated 16.11.2018 (Annexure P-1), passed by Superintendent District Jail, Faridabad, Neemka whereby application of the petitioner for grant of agricultural parole was disposed of stating that mobile phone was recovered from him on 15.7.2018, regarding which FIR No. 353 dated 15.7.2018, under Section 42-A of the Prisons Act (for short 'the Act'), 1894 was registered at Police Station Ballabhgarh, District Faridabad. Punishment of Solitary Confinement was also awarded to the convict which was judicially appraised by learned District and Sessions Judge, Faridabad. Therefore, the petitioner falls in the category of hard core prisoner as per Section 2(aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 and is not eligible for parole. Hence, application was disposed of.

The said order was passed after the order dated 30.10.2018 (Annexure P-2) passed by this Court directing the Superintendent, District Jail, Faridabad to dispose of the application dated 11.7.2018 filed by the petitioner for release on parole for 10 days.

State in the reply has taken the stand that three times mobile phone was recovered from the petitioner regarding which three FIRs have been registered against the petitioner under Section 42 A of the Act. He is also involved in two other cases of theft. Petitioner was twice awarded solitary confinement of 30 days which was judicially appraised by learned District and Sessions Judge, Faridabad. Hence, he prayed for parole and contested.

Heard learned counsel for the parties and have also gone through the case file.

On the last date of hearing, while noticing about the pendency of the three cases referred above, this Court had observed that the trials of the said cases are still pending. Therefore, at this stage, it is not proved that the mobile phones were recovered from him and that he falls under the category of hard core prisoner. There is other side of the case also. He is stated to have been twice punished by the jail authorities and kept in solitary confinement for 30 days. Therefore, it will also be questionable as to whether for the same offence, he could be tried and convicted twice for recovery of mobile phone.

Regarding the prayer for agricultural parole State was directed

to submit the report. State has submitted the report today which is taken on record. The said report shows that there is about little less than three acres of land in the name of the father of the petitioner. Petitioner is unmarried. Therefore, he is otherwise suppose to help his father in agricultural operations.

Further it comes out that the Superintendent, District Jail, Faridabad, Neemka is not the competent authority to decline the agricultural parole. It can only be decided by the Commissioner. Superintendent, District Jail, Faridabad, Neemka is only the competent authority to forward the case to the authorities concerned along with the character and role of the prisoner with his comments.

It being so, present petition is allowed and the impugned order dated 16.11.2018 (Annexure P-1), passed by Superintendent, District Jail, Faridabad, Neemka is otherwise not sustainable in the eyes of law and the same is set aside. The Superintendent, District Jail, Faridabad Neemka is directed to forward the case of the petitioner for parole to the competent authority along with his comments and let the competent authority take the decision on the same within the time frame fixed by the instructions issued by Government of Haryana, taking into consideration the observations made by this Court in the present order.

Disposed of.

(KULDIP SINGH)
JUDGE

8.7.2019
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