

CWP-33429-2018

[1]

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

**CWP No.33429 of 2018 (O&M)
Date of decision: April 12, 2019**

Chandi Ram

...Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Mr. Sandeep Vashisht, DAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent of Prison, District Prison, Jind dated 3.12.2018 (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 rigorous imprisonment for five years in case FIR No.387 dated 23.7.1998 under Sections 392/452/34 IPC Police Station Butana, Karnal after his conviction by the Trial Court. His appeal bearing Criminal Appeal No.311-SB of 2000 has been dismissed by this Court on 22.07.2013.

The petitioner submitted an application for his release on parole before the Superintendent of Prison, District Prison, Jind. However, no action was taken

on his request. He filed CWP No.29151 of 2018 titled 'Chandi Ram vs. State of

Haryana and others”. This petition was disposed of on 17.11.2018. The respondents were directed to decide the application of the petitioner. Thereafter, the impugned order rejecting the parole has been passed. It is stated that the petitioner falls in the category of 'hardcore prisoner' which was incorporated by Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 w.e.f. 1.10.2012. As he has not completed the mandatory five years of imprisonment in jail including maximum two years of the under-trial period as required under Sub-section (2) of Section 5A of the Act he is not entitled to the concession of parole, at this stage.

In the reply the same ground has been reiterated that the petitioner falls in the category of 'hardcore prisoner' as defined in Section 2(aa)(i)(2) of the Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988. A list of cases registered against the petitioner has been given. In ten cases the petitioner is on bail. In three cases he has been acquitted and in one he has been sentenced to the period already undergone by him.

Learned counsel for the petitioner has stated that the wife of the petitioner namely Reena has been suffering from 'hysterectomy' and the doctor has advised a surgical operation. It is stated that she is critical and under continuous treatment for the same. It is contended that the petitioner was convicted and sentenced vide judgment and order dated 17/22.12.1999 whereas, the amendment defining a 'hardcore prisoner' was made in the year 2012. The amendment being a penal provision cannot have retrospective application. The amended provisions cannot be invoked to deny parole to the petitioner.

This argument of the Ld. Counsel for the petitioner cannot be accepted.

The issue has been considered in two Division Bench decisions of this Court and

it has been held that the amended definition would be applicable even to convicts who were convicted prior to amendment and insertion of Clause (aa) in Section 2 of the Act. It was held that the grant of parole is to be considered as per law applicable on the date of consideration of parole.

In Crl. W.P. No. 2104 of 2012 Ajay Jadeja alias Janak Versus State of Haryana and others decided on 14.12.2012 it was observed:

“7. After hearing learned counsel for the petitioner and going through the provisions of the Principal Act as well as the Amendment Act, and the aforesaid decisions, we are not inclined to accept the aforesaid contention.

8. The right of a convict to get himself released temporarily on parole is not a substantive right. It is a concession given to a convict during his imprisonment, on fulfilling certain conditions. Those conditions have been prescribed by the Principal Act and the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. In case of change of conditions in the Principal Act and the Rules, which became applicable to all the convicts, whether convicted before or after the Amendment Act. Those conditions are to be looked into and applied on the date of making an application for temporary release of a prisoner and putting up the same before the competent authority for its consideration. If on that date, a particular prisoner is not entitled for temporary release, he cannot claim that on the date of his conviction, the Rules were different and he was entitled for temporary release under those Rules and he should be granted the benefit of temporary release.

9. In the present case, it has not been disputed before us that the petitioner is involved in many heinous crimes. He does fall under the definition of 'hardcore prisoner' and on 30.9.2010, the date on which the petitioner was convicted, he was involved in many other cases.

During the last years, several incidents have occurred, where the 'hardcore prisoners' involved in many criminal cases, when temporarily released, have committed serious offences during that period. Keeping in view the said factual position, vide notification dated October 01, 2012, Section 5A has been inserted in the Principal Act, providing that a 'hardcore prisoner' shall not be released on temporary basis, and he may only be allowed to attend the marriage of his child, grand child or sibling; or death of his grand parent, parent, grand parents-in-laws, parent-in-laws, sibling, spouse or child, and that too under the armed police escort, for a period of forty eight hours to be decided by the concerned Superintendent Jail. In this case, the application for temporary release of the petitioner was moved after insertion of the said amendment and the jail authorities declined to entertain the same on the ground that in view of Section 5A inserted in the Principal Act, the petitioner is not entitled to be released on temporary basis to meet his ailing wife or for her treatment. Therefore, in our opinion, the authorities were fully justified in not entertaining the application made on behalf of the petitioner for his temporary release.

*10. The judgments, relied upon by learned counsel for the petitioner are not applicable in the present case. In **State of Haryana and others v. Jagdish** (supra), the issue of pre-mature release of a convict was in question. In this regard, it was observed by the Hon'ble Supreme Court that case of the convict for his pre-mature release is to be considered on the basis of the instructions/rules existing on the date of conviction and the said vested right could not have been taken away on the basis of the subsequent policy restricting the right of pre-mature release, while observing that the State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy*

*existing on that date. There is a difference between pre-mature release and temporary release. Pre-mature release of a convict is a vested right whereas the temporary release is a concession and not a vested right. Therefore, the said decision would not help the petitioner. The case of **Bhola Ram** (supra) is with regard to grant of remission under the Punjab Grant of Remission of Punishment Policy, 2010. It was held in that case that the said benefit is to be granted prospectively and not retrospectively. The said policy was held to be applicable prospectively and not retrospectively. Therefore, the said decision has no bearing on the issue involved in the present case.*

11. The test to determine whether a particular amendment would operate prospective or retrospective depends upon the question whether it affects vested right of a person. No prisoner has a vested right to get the benefit of temporary release on parole. It is a concession, which is given to a prisoner on fulfilling certain conditions. If on the date of making an application for grant of temporary release, a prisoner fulfills all the conditions applicable in his case, he can be considered for such concession for a limited period. The petitioner, being a hardcore prisoner is not entitled for the said concession. He cannot be granted this concession merely because he was convicted prior to insertion of Section 5A in the Principal Act. In case of a hardcore prisoner, who is involved in many serious crimes, liberal approach cannot be adopted.”

The same view was reiterated in **Vakil Raj Versus State of Haryana and others** 2016(2) R.C.R. (Criminal) 1040 :

“23. The argument that amending Act would not be applicable to the convicts, who stand convicted prior to the insertion of Clause (aa) in Section 2, is again not tenable. The Division Bench of this Court in

Jagpreet Singh's case (supra) has referred to judgments of Hon'ble Supreme Court in Varinder Singh v. State of Punjab & another 2014(1) R.C.R.(Criminal) 663 : 2014(1) Recent Apex Judgments (R.A.J.) 427 : (2014) 3 SCC 151 and Harjit Singh v. State of Punjab, 2011(2) R.C.R.(Criminal) 560 : 2011(2) Recent Apex Judgments (R.A.J.) 373 : (2011) 4 SCC 441. However, Varinder Singh's case (supra) pertains to a conviction of a jail offence under Section 45 of the Prisons Act, 1894, whereas in Harjit Singh's case (supra), again the question was of enhancement of a sentence for an offence under Section 18 of Narcotic Drugs & Psychotropic Substances Act, 1985 by virtue of notification dated 18.11.2009. Thus, both the judgments have no applicability to the facts of the present case. The issue raised in the present case is not of conviction, but of grant of parole, which is a concession, as laid down in Ajay Jadeja's case (supra) relied upon by the learned State counsel. The amended definition would be applicable to all convicts, who were convicted prior to amendment and insertion of Clause (aa) in Section 2 of the Act. The grant of parole is to be considered as per law applicable on the date of consideration of parole.”

Accordingly, there is no merit in the petition and the same is dismissed.

April 12, 2019

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No