

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-160-2020 (O&M)
Date of Decision:-16.1.2020

Suresh Kumar ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Ms. Aditi Girdhar, Assistant Advocate General, Haryana.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court seeking grant of emergency parole so as to enable him to attend the marriage of his younger brother namely Anil, which is stated to be solemnized on 17-18.1.2020 at Village Karora, District Kaithal, particularly in view of the fact that the petitioner's father has already expired and he is the eldest member in the family.
2. Reply by way of affidavit of Sh. Sukhram, Superintendent, District Jail, Kaithal has been filed by learned State counsel today in Court, which is taken on record.
3. When this matter was taken up on 14.1.2020, it was informed by the learned State counsel that the application moved by the petitioner seeking grant of parole was still pending before the Divisional Commissioner, Karnal.

Consequently, directions were issued by this Court to the Divisional Commissioner, Karnal to decide the application. The operative part of order dated 14.1.2020 reads as follows:

“The learned State counsel has informed that the application moved by the petitioner seeking grant of parole is pending before the Divisional Commissioner, Karnal and that no final decision has been taken thereupon.

Since the petitioner seeks parole in order to make arrangements for marriage of his younger brother, especially since his father has already expired, the Divisional Commissioner, Karnal is directed to dispose of the application stated to be pending before it positively by tomorrow evening.

While disposing of the application, the Divisional Commissioner, Karnal shall take into account as to whether the petitioner has earlier misused the concession of parole, whenever he had been granted such concession. The said fact shall be incorporated in the order, as may be passed by the Divisional Commissioner, Karnal.”

4. Pursuant to the aforesaid directions, the Commissioner, Karnal Division, Karnal has passed an order disposing of the application filed on behalf of the petitioner and has declined the prayer made by the petitioner seeking parole.
5. The learned counsel for the petitioner has submitted that since it is a case where the marriage of real brother of the petitioner is to be solemnized, therefore, in terms of provisions of Section 3 (1)(b) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as '*the Act*') he would be entitled for his release on parole.
6. It has further been submitted that the Commissioner, Karnal Division while declining his application vide order dated 15.1.2020 has reached at an erroneous conclusion that the case of the petitioner would fall in the category of 'Hardcore Prisoner' in view of insertion of Section 5-A in the

Act pursuant to amendments made vide the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, whereas infact the petitioner, till date, has not been convicted of any offence so as to hold that the case of the petitioner falls within the ambit of 'hardcore prisoner'.

7. It is not disputed that the petitioner was involved in FIR No.371 dated 11.8.2016 registered at Police Station City Kaithal under Sections 147, 149 and 323 of Indian Penal Code and Section 42-A of Prisons Act on account of the fact that a mobile phone was recovered from one Mahavir, who disclosed that the mobile phone was also being used by the present petitioner alongwith other inmates. In order to examine as to whether the aforesaid conduct of petitioner would entail some disqualification for entitlement of parole, Section 5-A of the Act needs to be borne in mind. Section 5-A as inserted by the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 and as amended subsequently, reads as follows:

“ **5A.** Special provisions for temporary release of hardcore prisoners.

- (1) Notwithstanding anything contained in sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough;

Provided that a hardcore prisoners may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grant parent-in-laws, parent-in-laws, sibling, spouse, child or grant child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned Superintendent of Jail;

Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be

decided by the concerned Superintendent of Jail. He shall intimate within twenty-four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.”

8. This Court in a judgment rendered on 27.9.2016 in Criminal Writ Petition No.1299 of 2015 titled as Sunil @ Shilu Versus State of Haryana and others was seized of a question as to whether on account of mere lodging of an FIR in respect of alleged possession of a mobile phone from an inmate in jail, such inmate can be termed as a ‘hardcore prisoner’ or not. Specific question formulated in the said judgment is as follows:

“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.....”

9. The Division Bench, while considering the same, returned its finding on the aforesaid question as follows:

“ 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.”

10. In view of the ratio of the aforesaid judgment and the fact that the petitioner, till date, has not been convicted for any offence under Section 42-A of Prisons Act for having been found in possession or having used a mobile phone in jail, he cannot be termed as a ‘hardcore prisoner’ so as to disentitle him from the benefit of availing parole.

11. In the present case, it is not disputed that the petitioner has availed parole on earlier occasions also as has been specifically stated in the reply filed by the State, wherein the details of the parole as availed by the petitioner have been mentioned thus:

“.....Convict has availed six weeks parole for agriculture w.e.f. 10.04.2017 to 23.05.2017 and availed four weeks house repair parole w.e.f. 03.10.2017 to 01.11.2017 and availed four weeks parole for child admission w.e.f. 05.03.2018 to 03.04.2018 and also availed 25 days parole for agriculture purpose w.e.f. 19.11.2018 to 15.12.2018. During these periods no adverse report received against the convict.”

12. The aforesaid paroles have been availed after the alleged recovery of mobile phone in respect of which FIR No.371 dated 11.8.2016 had been lodged. It has specifically been stated in aforesaid reply that there is no adverse report received against the convict with regard to the aforesaid paroles. In other words, there is nothing on record to suggest that the petitioner had ever misused the concession of parole or had indulged into any other offence while availing parole.
13. In view of the aforesaid discussion, this Court is of the opinion that the petitioner is entitled to be released on parole so as to enable him to attend the marriage of his real brother especially keeping in view the fact that father of the petitioner is no more and he is the eldest in the family. Consequently, the present petition is allowed and the impugned order is hereby set aside. The petitioner is ordered to be released on parole for one week i.e. upto 24.1.2020, subject to his furnishing adequate sureties to the satisfaction of District Magistrate, Kaithal. The petitioner shall surrender back before the Jail authorities by the evening of 24.1.2020.

14. A copy of this order be furnished to the learned counsel for the petitioner under signatures of Bench Secretary of this Court.

16.1.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No