

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-W Nos. 435-36 of 2020
in/and CRWP No. 378 of 2020

Date of Decision : June 23, 2020

Chanderpal @ Dharmender @ Dhamal Petitioner

VS.

State of Haryana and others Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.

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Present : Mr. Ravinder Bangar, Advocate
for the applicant/petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana
for the respondent-State.

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MEENAKSHI I. MEHTA, J. :

This order shall dispose of two Criminal Miscellaneous Applications, i.e. **CRM-W Nos.435-36 of 2020** as well as the main Criminal Writ Petition, i.e. **CRWP No.378 of 2020** as the issue involved in all these three matters is the same.

2. By way of **CRM-W No.435 of 2020**, the petitioner above-named has sought the relief of preponement/early hearing of **CRWP No.378 of 2020**, as preferred by him for seeking his release on parole and has also prayed for interim direction to the respondents for granting him the

namely Neha, which is scheduled to be solemnized on 26.06.2020 whereas in **CRM-W No.436 of 2020**, he has made a specific prayer for grant of the said emergency parole while averring that he has to make the arrangements for the marriage of his afore-named niece as she had been residing with him.

3. In the main petition, i.e. **CRWP No.378 of 2020**, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order dated 19.12.2019 (Annexure P-1), whereby the request/ application for his release on parole has been rejected. He has also sought the relief of issuance of a writ in the nature of mandamus directing the respondents to release him on parole, while pleading that the actual period of his custody in the case arising out of FIR No.229 dated 24.12.2015, under Sections 147, 148, 149, 307, 302 IPC and Section 25 of the Arms Act, is more than 03 years and with remission, the same comes out to be 03 years 07 months. Earlier, in **CWP No.3684 of 2019**, as preferred by him for seeking parole for the repair of his house, he was so released for 07 days, in view of the application moved therein for seeking emergency parole but he could not get his house repaired and the application, as moved by him again for the afore-said purpose, has been rejected by respondent no.3, vide impugned order Annexure P-1.

4. In **CRWP No.378 of 2020**, the respondents filed their reply by way of affidavit of respondent No.4 wherein they contested the claim of the petitioner while asserting that being a “Hardcore Prisoner”, he was not

No.436 of 2020, as filed today on behalf of all the respondents by way of affidavit of Deputy Superintendent, District Jail, Gurugram, the afore-said assertions have been reiterated.

5. We have heard learned counsel for both the parties and have perused the file thoroughly.

6. So far as the prayer, as made by the petitioner in CRM-W No.435 of 2020 for preponement and hearing of the main Criminal Writ Petition is concerned, the same is allowed. As regards the relief as sought by him therein for grant of emergency parole on the ground of marriage of his niece, the same is being dealt with and decided along-with CRM-W No.436 of 2020, wherein the petitioner has prayed for the same relief on the same ground. In CRWP No.378 of 2020, he has prayed for grant of parole for four weeks for house-repair. However, the core issue involved in all the afore-said three matters is the same, i.e. grant of parole. Admittedly, the petitioner has been convicted under Sections 148/149/307/302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.15,000/- in the case arisen out of said FIR No.229 dated 24.12.2015, registered at Police Station Bawal and the appeal as filed to challenge the same, i.e. CRA-D-563-DB of 2017, is stated to be pending.

7. Learned counsel for the petitioner has relied upon the orders dated 13.09.2019 and 12.10.2018 passed by the Single Benches of this Court and has contended that the petitioner had been granted the relief of

parole earlier also and therefore, he is entitled to the same relief to attend

the marriage of his niece as well as for the repair of his house. He has further contended that the mere fact that the petitioner was found in possession of a mobile phone during the search in the jail, is not sufficient enough to bring him within the category of “Hardcore Prisoner”. In support of this contention, he has placed reliance upon the observations as made by the Division Bench of this Court in **CRWP No.1374 of 2017 – Gurdeep Singh vs. State of Haryana and others.**

8. On the other hand, learned counsel for the respondent-State has opposed the prayer of the petitioner for grant of parole while arguing that he (petitioner) was found in possession of a mobile phone during the jail search and he has also been convicted under Section 392 IPC in a criminal case and as such, he falls under the category of “Hardcore Prisoner”, in view of the provisions as contained in para 2(aa)(i)(1) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 (hereinafter referred to as “the Act of 2013”) and he has also not completed the requisite period of five years of imprisonment as envisaged under Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, as amended vide Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 (hereinafter referred to as “the amended Act of 2015”) and is also involved in several other criminal cases and hence, he is not entitled to the relief of grant of parole and it being so, **CRM-W No.436 of 2020** as well as **CRWP No.378 of 2020** deserve dismissal.

Prisoner” and its sub-clause (i) (1) provides that “Hardcore Prisoner” means “a person who has been convicted of robbery under Section 392 or 394 IPC”. The observations made by the Division Bench of this Court in **Gurdeep Singh (supra)** are of no help to the petitioner to seek the relief of grant of parole because all that had been held in the above-noted case was that mere recovery of a mobile phone from a jail inmate was not sufficient to categorise him as “Hardcore Prisoner” unless he was found to have misused the same for committing another crime while inside the jail whereas in the case in hand, it has been specifically mentioned in paras 7 (iii) and 10(iv) of the preliminary submissions in the written reply to the said main Criminal Writ Petition that the petitioner, besides having been found in possession of a mobile phone during the search in the jail, has also been convicted under Section 392 IPC and this fact brings him within the four corners of the definition of “Hardcore Prisoner”, as provided under Section 2(aa)(i)(1) of the Act of 2013, as discussed above. In these circumstances, the mere fact that the petitioner was granted emergency parole in **CWP No.3684 of 2019**, vide order dated 13.09.2019, does not come to the rescue of the petitioner. As regards the order dated 12.10.2018, as passed in **CWP No.24366 of 2018**, a perusal of the same reveals that only a direction was given to the concerned Authority to re-examine the matter for grant of parole to him.

10. Further, Section 5A(2) of the amended Act of 2015 provides

that a convicted “Hardcore Prisoner” may be entitled for temporary release

or furlough but only on completion of five years of imprisonment by him.
Admittedly, the petitioner has also not completed the period of five years of imprisonment.

11. As a sequel to the foregoing discussion, the afore-said Criminal Miscellaneous Application, i.e. CRM-W No.436 of 2020 as well as the main CRWP No.378 of 2020, being sans any merit, are hereby dismissed. Accordingly, CRM-W No.435 of 2020 also stands partly dismissed so far as it relates to the relief of emergency parole.

(DAYA CHAUDHARY)
JUDGE

June 23, 2020
monika

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.