

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

105

CRWP-532-2020

Date of Decision : 11.02.2020

Sanjeev Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Arjun Singh Yadav, AAG Haryana
for the respondents.

ARUN KUMAR TYAGI, J.

The petitioner-Sanjeev Kumar has filed present petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus for directing the respondents to release the petitioner on four weeks parole for marriage of Neha-daughter of his sister scheduled to be held on 15/16.02.2020.

2. The petitioner was convicted and sentenced by learned Additional Sessions Judge, Kurukshetra to undergo life imprisonment and to pay fine of Rs.50,000/- and in case of default of payment of fine to further undergo imprisonment for three years in case FIR No.128 dated 24.06.2006 registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 25 of the Arms Act, 1959 at Police Station Kurukshetra University, District Kurukshetra vide judgment of conviction and order of sentence dated 05.08.2008. His Appeal CRA-D-613-DB-2008 was dismissed by this

Court on 12.12.2013. The petitioner was further convicted and sentenced to undergo life imprisonment and to pay fine of Rs.65,000/- and in case of default of payment of fine to further undergo imprisonment for two years and six months in case FIR No.138 dated 20.07.2006 registered under Sections 302 and 201 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Taraori, District Karnal by learned Additional Sessions Judge, Karnal vide judgment of conviction and order of sentence dated 26.05.2009. The petitioner, who is presently confined in District Jail, Karnal, has filed the present petition for issuance of writ of mandamus directing grant of parole.

3. The petitioner has averred in the petition that marriage of Neha, daughter of his sister, has been fixed with Virender from Ambala. The ladies sangeet will be performed on 15.02.2020 and the reception of Barat will be on 16.02.2020 at Community Hall, Near Sector-5, Kurukshetra Road, Pipli and the Bhat Ceremony will be performed before the marriage. Father of the petitioner has already expired. The petitioner has to perform the Bhat Ceremony and has to arrange the money, clothes and other necessary things and for the said purposes the petitioner requires four weeks parole. The mother of the petitioner also made a representation dated 01.01.2020 for parole of the petitioner to respondent No.4 who did not take any action on the same. The Sarpanch of the village Mirchaheri, District Kurukshetra has given certificate that there will be no disturbance of peace in the village if the petitioner gets parole. The case of the petitioner is covered under Section 3(1)(b) of the Haryana Good Conduct Prisoners (Temporary

Release) Act, 1988. Therefore, writ in the nature of mandamus directing the respondents to release him on four weeks parole may be issued.

4. Vide order dated 20.01.2020, notice of the petition was given to the respondents.

5. Short affidavit dated 31.01.2020 of Sh. Ajay Kumar, HPS, DSP, Kurukshetra was filed on behalf of Superintendent of Police, Kurukshetra admitting the fact of marriage but objecting to grant of parole on the ground of the petitioner committing heinous crime and misusing the parole.

6. Reply by way of affidavit dated 03.02.2020 of Sh. Sher Singh, Superintendent of Prison, District Prison, Karnal was filed on behalf of the respondents. In the said reply, it has been mentioned that a mobile phone was recovered from the petitioner on 26.06.2016 at the time of his confinement at District Jail, Yamuna Nagar regarding which FIR No.381/2016 under Section 42 of the Prisons Act was registered at Police Station City Jagadhri against the petitioner in which the petitioner was convicted and sentenced to the period already undergone by the learned Additional Chief Judicial Magistrate, Yamuna Nagar vide order dated 24.05.2017. The petitioner falls in the category of hard core prisoner as per Section 2(aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. It has been further mentioned in the reply that the prisoner was released on nine days emergency parole on 22.09.2008 due to death of his father Prem Chand and he was directed to surrender at jail on 02.10.2008 but the petitioner surrendered on 19.11.2008 after 48 days. In this regard, FIR No.77 dated 11.10.2008 was registered against the petitioner under Sections 8

and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 at Police Station Babain in which the petitioner was convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.100/- and in default of payment of fine to further undergo simple imprisonment for 15 days. Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 bars release of a hardcore prisoner on temporary basis or on furlough. Section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014 provides that a hardcore prisoner who has not been awarded death penalty may be entitled for temporary release or furlough only if he has completed five years of sentence as a convict in jail excluding the under trial period and has not been awarded any major or minor penalty by the Superintendent Jail, as judicially appraised by the concerned District and Sessions Judge. While referring to judgments of the Division Benches of this Court in ***CRWP No.483 of 2012 decided on 16.03.2012*** and ***CRWP No.1840 of 2014 decided on 28.11.2015*** it has been submitted that the legal bar imposed by the statutory rule ought not to be overcome by a judicial order. In the reply it has been further submitted that the parole application made by the mother of the petitioner was considered and rejected by respondent No.4 on 13.01.2020 and intimation regarding the same was also given to the petitioner. The petitioner is not entitled for temporary release as he was found to be in possession of mobile phone and being a hardcore prisoner has not completed five years after conviction.

7. Short reply dated 05.02.2020 by way of affidavit of Sh.

Sher Singh, Superintendent of Prison, District Prison, Karnal was also filed on behalf of the respondents extracting the report dated 05.02.2020 of the SHO, Police Station Babain verifying the factum of marriage mentioning that the petitioner is the only brother and that mother of the petitioner is living alone while raising the apprehension that the petitioner could jump parole or commit some heinous offence.

8. I have heard arguments addressed by learned Counsel for the petitioner and learned State Counsel and gone through the record.

9. Mr. Ravinder Bangar, Advocate for the petitioner has argued that marriage of the daughter's sister of the petitioner is fixed for 16.02.2020. The petitioner is the only brother and there is no other male member in the family. Presence of the petitioner is required for performing customary Bhat Ceremony and for making necessary arrangements for money, clothes and other things for the same. The petitioner is not stated to have used the mobile phone for commission of any heinous offence. Therefore, the petitioner could not be treated as hardcore prisoner. The petitioner is entitled for grant of four weeks parole for the purpose of marriage of daughter of his sister and has been wrongly denied the same. Therefore, writ in the nature of mandamus directing the respondents to grant four weeks parole to the petitioner may be issued. In support of his arguments, learned Counsel for the petitioner has placed reliance on the observations made by Division Bench of this Court in ***Gurdeep Singh Vs. State of Haryana and others : 2018 (4) PLR 77.***

10. On the other hand Mr. Arjun Singh Yadav, AAG Haryana has argued that the petitioner did not maintain jail discipline and kept

mobile phone in his possession for which he has also been convicted and sentenced and the petitioner falls in the category of hardcore prisoner under Section 2(aa)(iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. The petitioner was granted 9 days emergency parole at the time of death of his father but the petitioner jumped parole and FIR No.77 dated 11.10.2008 under Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 was registered against him at Police Station Babain. The petitioner has not completed the period of five years after his conviction. The petitioner is not entitled for grant of parole. Therefore, the petition may be dismissed.

11. For determination of the questions involved in the present case, a reference to the relevant statutory provisions is essential.

12. Section 2(aa) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which defines hardcore prisoner, reads as under:-

“(aa) 'hardcore prisoner' means as person,-

- (i) who has been convicted of-***
 - (1) robbery under section 392 or 394 IPC;***
 - (2) dacoity under section 395, 396 or 397 IPC;***
 - (3) kidnapping for ransom under section 364-A IPC;***
 - (4) murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;***
 - (5) rape with murder under section 376 read with 302 IPC;***
 - (6) rape with a woman below sixteen years of age;***
 - (7) rape as covered under section 376-A, 376-D or 376-E IPC;***
 - (8) serial killing i.e. Murder under section 302 IPC is two or more cases in different First Information Reports;***

- (9) *murder under section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case;*
- (10) *lurking house trespass or house breaking where death or grievous hurt is caused under section 459 or 460 IPC;*
- (11) *either of offence under sections 121 to 124-A IPC;*
- (12) *immoral trafficking under section 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) involving minors or under section 366-A 366-B 372 or 373 IPC;*
- (13) *offence under section 17(c) or 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or*
- (14) *offence under section 14 of the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012); or*
- (ii) *who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months:*

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded:

Provided further that if a conviction has been set-aside in appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to death penalty; or
(iv) who has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(v) who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act:

Provided that the State Government may, by notification include any offence in the list of offences mentioned above.

Explanation.- *For the purposes of this section, "IPC" means the Indian Penal Code, 1860 (Central Act 45 of 1860)*

(b) "member of prisoner's family" means the husband, wife, son, daughter, father, mother, brother or sister of the prisoners;

(c) *“prescribed” means prescribed by the rules made under this Act;*

(d) *“prisoner’ means a person confined in prison or jail or other institution of like nature under a sentence of imprisonment for life or imprisonment by any court in India or the Court Martial or any other authority exercising the powers of a Criminal Court;*

(e) *“Superintendent of Jail” means the officer incharge of the prison or jail or other institution of like nature in which the prisoner is undergoing his sentence of imprisonment for life or imprisonment.”*

13. Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which provides for temporary release of prisoners on certain grounds, reads as under :-

“3. Temporary release of prisoners on certain grounds:-

(1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that-

- (a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or
- (b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated; or
- (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or
- (d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

- (a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

- (b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and
- (c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks:

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, exercise its powers under this section in respect of all or any other ground specified thereunder.”

14. Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which makes special provision for temporary release of hardcore prisoners, provides as under :

“5A. Special Provisions for temporary release of hardcore prisoners:- 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, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand 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.

(2) Notwithstanding anything contained in sub-section (1) a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge :

Provided that the five years imprisonment period

shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

15. The question which first arises is as to whether the petitioner, who is entitled to grant of four weeks parole under Section 3(1)(b) read with Section 3(2)(b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 on the ground of marriage of daughter of his sister, can be treated as hardcore prisoner.

16. No doubt, FIR No.381/2016 was registered against the petitioner under Section 42 of the Prisons Act at Police Station City Jagadhri regarding the alleged recovery of mobile phone from the petitioner during his confinement at District Jail, Yamuna Nagar in which he was convicted and sentenced to the period already undergone by the learned Additional Chief Judicial Magistrate, Yamuna Nagar vide judgment of conviction and order of sentence dated 24.05.2017 and his appeal was dismissed by learned Sessions Judge, Yamuna Nagar but the petitioner has already filed revision petition bearing CRR No.1296 of 2019 titled 'Sanjeev Vs. State of Haryana' before this Court which is pending and the question of his guilt and innocence and the validity of judgment of conviction and order of sentence are yet to be finally adjudicated upon. Consequently, till such final adjudication of the matter, the petitioner cannot be treated to have committed jail offence under Section 42 of the Prisons Act and cannot be deprived of his statutory rights of parole by categorizing him as hardcore prisoner.

17. Even otherwise, it may be observed that the question as to whether a prisoner can be categorised as hardcore prisoner on the basis of mere possession of mobile phone was considered by Division Bench of this Court in ***Gurdeep Singh Vs. State of Haryana and others*** : **2018 (4) PLR 77** which observed as under:-

“3. We have heard learned counsel for the parties and gone through the record. While this Court, in no uncertain terms, holds that the jail inmates cannot be allowed to keep mobile phones or such other gadgets etc. which are oftenly used to commit professional crimes like demand of ransom, kidnapping etc. etc.. Nevertheless, it is an integral part of the jail reforms that the inmates should be provided with telephone facilities to connect themselves with their family, nears and dears. Such a facility can be made available by the jail authorities through a land line number(s). In this backdrop, it is difficult to accept that the mere recovery of mobile phone from an inmate against whom there is not even a whisper that he ever misused the phone either to blackmail some one or for demanding ransom or he involved himself in any other nature of crime, would be sufficient to categorise him as a 'hardcore' prisoner. It is only in a case where the inmate is found to have misused the mobile facility for committing another crime while inside the jail, that he should be put into the category of 'hardcore criminals' and be deprived of his statutory right of parole. The petitioner, in the absence of any such allegation, does not fall in that exceptional category. We, thus, set aside the objection raised by the respondents and direct the Competent Authority to consider the case of the petitioner for his release on agricultural parole. The appropriate order shall be passed within one week from the date of receipt of a certified copy of this order.”

18. In the present case, there is no allegation against the petitioner that he has misused the phone either to blackmail someone or demanding ransom or committing any other crime while inside the jail. Therefore, the petitioner could not be categorised as hardcore prisoner on the basis of mere recovery of mobile phone without any allegation as to its misuse for commission of any crime and the petitioner cannot be

denied parole on the basis thereof.

19. The question which next arises is whether the legal bar contained in Section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is applicable to the petitioner.

20. The petitioner had been convicted and sentenced in case FIR No.128 dated 24.06.2006 vide judgment dated 05.08.2008 and his appeal was dismissed on 12.12.2013 and he was convicted and sentenced in case FIR No.138 dated 20.07.2006 vide judgment dated 26.05.2009. The petitioner has already completed 5 years of sentence as convict in jail. There is nothing on record to show that he has been awarded any major or minor penalty by the Superintendent Jail, as judicially appraised by the concerned District and Sessions Judge. Therefore, the bar contained in Section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is not applicable to him. For this view, I also draw support from order passed by Coordinate Bench of this Court in ***Surjeet Singh Vs. State of Haryana and others : 2018 (1) RCR (Criminal) 497.***

21. The parole application of the petition was also objected to on the ground of apprehension of commission of heinous offence by him/breach of peace. As per certificate of the Sarpanch filed with the petition, there is no fear of breach of peace in the village in case of release of the petitioner on parole.

22. The question which next arises is as to whether the petitioner can be denied parole on the ground of apprehension of breach of peace.

23. In ***Mahender Singh Vs. The State of Haryana and Others***

: **2018(2) Law Herald 1245** the Coordinate Bench of this Court granted two weeks parole to the petitioner while relying on the following observations made by this Court in CRM-M No.34013 of 2009 titled as **Varun @ Gullu v. State of Haryana and others decided on 26.04.2010:-**

"No doubt parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by a statute and on fulfilment of conditions prescribed therein, a prisoner is entitled to parole . The concession of releasing a prisoner on parole or furlough is circumscribed by a statute; therefore, the release of a prisoner is in exercise of the right created under that statute. Therefore, the authorities under the Act cannot act arbitrarily, capriciously or without due application of mind. The statutory power to release a prisoner on parole or furlough is to be exercised objectively keeping in view the intention of the legislature and the purpose of admitting a prisoner to parole or furlough.

In the cases, which have come up earlier before this Court as per judgments referred to by the learned counsel for the petitioners, the usual ground to decline parole or furlough by the authorities under the Act is that there is apprehension of breach of peace, in case the prisoner is released on parole or furlough. The question which requires our consideration is what endangers the security of the State or the maintenance of public order and whether the recital in the order that there is apprehension of breach of peace, if prisoner is released on parole or furlough, satisfies the conditions contemplated under Section 6 of the Act. We find that the authorities under the Act have been consistently declining the request for parole or furlough only for the reason of apprehension of breach of peace, whereas there is no such condition under the Act. This is so in spite of numerous judgments of this Court that apprehension of breach of peace by a prisoner is not a ground to decline the request for parole or furlough."

24. In view of the observations in the above-referred cases, the petitioner cannot be denied parole on the ground of apprehension of breach of peace.

25. No doubt, the petitioner had jumped 9 days emergency parole granted on 22.09.2008 on death of his father Prem Chand and had surrendered on 19.11.2008 after 48 days overstay regarding which FIR No.77 dated 11.10.2008 was registered against him under Sections 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 in Police Station Babain and he was thereupon convicted and sentenced for the same, but thereafter the petitioner was granted parole six times and furlough two times and the petitioner did not jump or misuse the same and therefore the petitioner cannot be denied parole on the ground of such previous mis-conduct also.

26. In view of the facts and circumstances of the present case as well as well as the observations made in the above-referred judgments, the present petition is allowed and writ of mandamus is issued directing the respondents to release the petitioner on parole for a period of two weeks w.e.f. 14.02.2020 on furnishing of bail bonds by the petitioner to the satisfaction of the **Competent Authority**. On expiry of period of parole of two weeks from the date of his release, the petitioner shall surrender before the jail authorities. However, the parole shall be subject to the following terms and conditions:-

- (i) *The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.*
- (ii) *The petitioner shall keep away from the area around the residence of the victim and his/her family members.*

- (iii) *Immediately upon the expiry of period of parole , the petitioner shall surrender himself before the Jail Superintendent.*
- (iv) *The period of parole shall be counted from the day when the petitioner is released from jail.*

11.02.2019
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No