

SUNIL @ MIDDA

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present : Mr. Rahul Deswal, Advocate for the petitioner.
Mr. Surender Singh, AAG, Haryana.

B.S. Walia, J. (V.C.)

[1] Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

[2] Prayer in the petition under Article 226 of the Constitution of India read with Section 3 (1) (a) of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short – 'the Act') is for the issuance of a writ of Certiorari for quashing impugned order, Annexure P/1 dated 02.07.2020 whereby the prayer of the petitioner for parole / emergency parole was denied in view of his not having surrendered in time on earlier grant of six weeks' parole from 15.12.2015 till 27.01.2016 and having been arrested by the Police in another case on 06.02.2016.

[3] Learned counsel for the petitioner contends that the impugned order (Annexure P/1) passed on the application of the petitioner is legally unsustainable as the case registered under Sections 8 and 9 of the Act, Police Station Titram, Kaithal on account of overstay of six weeks' parole from 15.12.2015 to 27.01.2016 resulted in the acquittal of the petitioner vide

dated 08.08.2017.

[4] Learned State Counsel while reiterating the basis for passing of the impugned order does not controvert that the petitioner was acquitted vide order, Annexure P/4 dated 08.08.2017 by the learned Judicial Magistrate 1st Class, Kaithal of the offences under Sections 8 and 9 of the Act registered at Police Station Titran, Kaithal on account of having overstayed parole from 15.12.2015 to 27.01.2016 and having been arrested by the Police only on 06.02.2016.

[5] I have considered the submissions of learned counsel. Section 5A (2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 is reproduced as under:-

“Section 5A (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 year 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”

[6] A perusal of Section 5A(2) of the Act as reproduced above reveals that a convicted hardcore prisoner who has not been awarded death penalty, is entitled for temporary release or furlough only if he has completed 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.

[7] Learned counsel for the petitioner contends that as per Section 5A (2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 *ibid*, even a convicted hardcore prisoner who has not been awarded death penalty, is eligible for temporary release or furlough, if he has completed five years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail as judicially apprised by the concerned District and Sessions Judge whereas in the instant case although case was registered against the petitioner under Sections 8 and 9 of the Act at Police Station Titran, Kaithal for overstaying parole in case FIR No.174 dated 01.09.2009 under Sections 392/387 IPC and Sections 25 of the Arms Act, Police Station Sadar Kaithal from 15.12.2015 to 27.01.2016 by not surrendering before the Jail Authority and was arrested by the Police on 06.02.2016 in another case, but he was not awarded any major punishment by the Superintendent of Jail, therefore, the question of the same being judicially appraised by the concerned District and Sessions Judge did not arise and further that even the case registered against the petitioner under Sections 8 and 9 of the Act at Police Station Titran, Kaithal for overstaying parole from 15.12.2015 to 27.01.2016 resulted in his acquittal vide order, Annexure P/4 dated 08.08.2017 passed by the learned Judicial Magistrate 1st

the same has been passed only on the ground of the petitioner not having surrendered on time.

[8] Admittedly, Section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 provides for grant of parole even to a convicted hardcore prisoner who has not been awarded death penalty, and has completed five years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail as judicially apprised by the concerned District and Sessions Judge. However, the impugned order passed on 02.07.2020 is only on the ground of misuse of concession of six weeks parole granted to the petitioner from 15.12.2015 till 27.01.2016 on account of the petitioner not having surrendered in time and of his having arrested by the Police in another case on 06.02.2016. No major punishment was awarded by the Superintendent of Jail, at least none has been pointed out by the learned State Counsel, therefore, the question of the same being judicially apprised by the concerned District and Sessions Judge did not arise. Besides, even the case registered against the petitioner under Sections 8 and 9 of the Act at Police Station Titran, Kaithal for overstaying of parole from 15.12.2015 to 27.01.2016 resulted in his acquittal vide order, Annexure P/4 dated 08.08.2017 passed by the learned Judicial Magistrate 1st Class, Kaithal,

[9] In the circumstances, impugned order, Annexure P/1 dated 02.07.2020 passed on the application of the petitioner for emergency parole is quashed. The Superintendent Jail, District Jail Panipat is directed to consider the claim of the petitioner for release on emergency parole in

Release) Amendment Act, 2015 ibid by taking into account the judgment of acquittal i.e. Annexure P/4 dated 08.08.2017 passed by the learned Judicial Magistrate 1st Class, Kaithal and pass a speaking order in accordance with law as expeditiously as possible preferably within one week from the date of receipt of certified copy of this order.

[10] Crl. Writ petition stands disposed of in the aforementioned terms.

(B.S. Walia)
Judge

September 11, 2020

'Rajneesh-Amit'

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |