

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
102

CRWP No. 5645 of 2020

Date of Decision: 10th August, 2020

Mubarik

....Petitioner

VERSUS

State of Haryana and others

....Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Abhinav Sood, Advocate for the Petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. This is a petition seeking parole for a period of 6 weeks on the ground that the High Powered Committee ('HPC') of this Court has recommended grant of special parole.
2. It must be noted at the outset that the Petitioner is a convict, who is undergoing a sentence of rigorous imprisonment for 10 years, awarded to him by the judgment dated 5th May, 2017 of the Additional Sessions Judge, Palwal pursuant to his conviction for the offence punishable under Section 376 (2) (g) of Indian Penal Code ('IPC') as well as offences under Sections 452 and 323 of the IPC. During the course of his imprisonment, another FIR No. 561/2018 was registered under Section 42 of the Prisons Act, 1894 against him in the year 2018 on the ground that he was found to be in possession of a cell-phone in the jail.
3. Mr. Abhinav Sood, learned Counsel for the Petitioner submits that notwithstanding the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter 'Act'), Section 2 (aa) (iv) of which defines the expression 'hard core prisoner' to mean a person "who

[CRWP-5645-2020]

has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises”, the Petitioner should be released on parole since he has been granted bail in the aforesaid FIR registered in connection with his being found in possession of a cell-phone. According to him, till such time he is convicted of such offence, which has been registered under Section 42 of the Prisons Act, the said circumstances should not come in the way of him being granted parole.

4. Mr. Ankur Mittal, Additional Advocate General, State of Haryana, resists this application by drawing the attention of the Court to the decision of Division Bench (‘DB’) of this Court in ***Vakil Raj v. State of Haryana 2015 (3) PLJ (Criminal) 653***, in which, after explaining the provisions of the Act, the DB was of the view that “a convict, who does not maintain jail discipline, is not entitled to parole as one of the conditions of granting parole is good behaviour during custody”. The DB also held that “imposing a condition that use of a mobile, which has the potential of misuse, will disentitle a convict for grant of parole, cannot be said to be unjustified as it is a requirement introduced for maintaining discipline and a good behaviour in jail.” For all the aforesaid reasons, the refusal to grant parole was upheld. The said judgment has been followed by a Single Judge of this Court in ***Sukhvir Singh alias Sukha v. State of Punjab 2019 (3) PLR 489***.

5. This court is not impressed with the argument that until the Petitioner is convicted in the FIR registered against him for the offence punishable under Section 42 of the Prisons Act, Section 2 (aa) of the Act would not apply. The words used in Section 2 (aa) (iv) of the Act are such that the definition of ‘hardcore prisoner’ would stand attracted once a person is “detected of using a cell-phone”. Till such time that the Petitioner is

[CRWP-5645-2020]

cleared in the FIR No. 561/2018, which has been registered against him, notwithstanding the fact that he has been granted bail in the said FIR, it would not be possible to accept the Petitioner's prayer for grant of parole.

6. Learned counsel for the Petitioner points out that on two occasions, he has been granted parole. Once, for attending his brother's marriage and on another occasion on 22nd January, 2020 for a period of 3 weeks to assist his daughter for being operated on for removal of a stone in her left kidney. He submits that the Petitioner surrendered at the end of parole period on both the occasions.
7. As pointed out by Mr. Ankur Mittal, the above instances of granting parole were pursuant to the order dated 15th March, 2019 in CRM-8789-2019 and the order dated 22nd January, 2020 in CRWP No. 2457 of 219 of this Court. It is also not clear if the above judgment in *Vakil Raj (supra)* was brought to the notice of the Court when it passed the abovementioned orders.
8. The Court would like to note that under Section 5A of the Act, the Petitioner would nevertheless be entitled to be considered for parole on the completion of at least 5 years of custody in jail and no observations in the present order should be construed as a pre-determination of such prayer, if and when it is made by the Petitioner.
9. For all the reasons recorded hereinabove, the Court finds no merit in this petition and dismisses it as such.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10th August, 2020
Sachin M.