

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

.....

CRWP-5780-2020

.....

Date of Decision:11.08.2020

Sunil Gupta

....Petitioner

Vs.

State of Punjab and others

.....Respondents

.....

**Coram: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Ashok Kumar Verma**

.....

Present: Mr. Anterpreet Singh, Advocate for the petitioner.

**Mr. S.P.S. Tinna, Additional Advocate General, Punjab
for the respondent-State.**

.....

Ashok Kumar Verma, J.

This criminal writ petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of direction to the respondents to release the petitioner temporarily on parole for eight weeks under Section 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as 'the Act'). It has also been prayed for setting aside the impugned order dated 27.01.2020 (Annexure-P.1) passed by respondent No.3, which is totally against the provision of law.

Notice of motion.

On the asking of Court, Mr. S.P.S. Tinna, learned Additional

[2]

Advocate General, Punjab has put in appearance on behalf of the respondents and accepts notice.

The brief facts of the case are that the petitioner has been convicted in FIR No.58 dated 25.02.2016 registered for the offences under Sections 302, 307, 376, 506 and 120-B IPC and Section 4 of POCSO Act at Police Station Focal Point, Ludhiana, vide judgment and order dated 15.05.2019 passed by learned Additional Sessions Judge, Ludhiana and sentenced to undergo imprisonment for life along with a fine of ₹50,000/- and in default thereof he was ordered to further undergo rigorous imprisonment for three months for the offence under Section 302 IPC. He has also been sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of ₹10,000/- and in default thereof to further undergo imprisonment for 1 month for the offence under Section 506 IPC. He has also been sentenced to undergo imprisonment for life and to pay a fine of ₹50,000/- and in default thereof to further undergo rigorous imprisonment for three months for the offence under Section 4 of POCSO Act. The petitioner has filed criminal appeal i.e. CRA-D-507-2019 against the judgment of conviction and order of sentence dated 15.05.2019. The petitioner has been in custody since 26.02.2016. The petitioner has applied for temporary parole on 03.10.2019 for a period of 8 weeks before respondent No.4 (Superintendent, Central Jail, Ludhiana) and the same was marked to respondent No.3 (Deputy Commissioner, Ludhiana) to enquire into the application. The Deputy Commissioner, Ludhiana has declined the above parole application vide its order dated 27.01.2020 (Annexure-P.1).

[3]

Learned counsel for the petitioner argued that the impugned order passed by respondent No.3 is totally against the provisions of law and the reason given by it is totally illegal and against law. The reason given by respondent No.3 while declining the parole is that the case of the petitioner falls under the definition of 5-A of the Punjab Good Conduct (Temporary Release) Amendment Act, 2015 (hereinafter referred to as 'the Amendment Act, 2015') i.e. hardcore prisoners as the petitioner was convicted for the offences under Section 302 IPC and Section 4 of POCSO Act, which is the heinous crime. He argued that in the enquiry conducted, the Police has submitted its report that there is no threat to security of the State in case the petitioner is released on parole, but respondent No.3 has ignored the enquiry conducted by the Police and declined the parole. He further argued that the petitioner is neither a habitual offender nor any other case is pending against him and the reason given by respondent No.3 is totally against the settled law as the case of the petitioner does not fall under the definition of hardcore prisoner. He further argued that the petitioner fulfills all the conditions of Sections 3(1)(b) of the Act.

On the other hand, learned State counsel argued that the petitioner is a hardcore prisoner and thus, he is not entitled to be released on parole in view of Section 5-A of the Punjab Good Conduct (Temporary Release) Amendment Act, 2015.

We have heard learned counsel for the parties and given our careful thoughtful consideration to the facts of the case.

From the perusal of the record, it is seen that the petitioner has

[4]

been convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of ₹50,000/- and in default thereof he was ordered to further undergo rigorous imprisonment for three months; under Section 506 IPC he was sentenced for three years imprisonment and ₹10,000/- fine and in default of fine to further undergo imprisonment for one month and under Section 4 of POCSO Act he was sentenced for life imprisonment and ₹50,000/- fine and in default thereof to further undergo imprisonment for three months. That being so, the petitioner has been convicted for the offence under Section 4 of the POCSO Act, which is more heinous crime than Section 376 IPC. So, he falls under the definition of hard core prisoner and as per as per the provision of Section 5-A of the Amendment Act, 2015, hardcore prisoners are not entitled to release on parole under this Act, hence the petitioner is not entitled to be released on parole.

In view of the aforesaid facts and circumstances, we find no ground to interfere in the impugned order dated 27.01.2020 (Annexure-P.1).

We find that no ground has been made out for grant of parole to the petitioner. This petition is, therefore, accordingly dismissed.

(Jaswant Singh)
Judge

(Ashok Kumar Verma)
Judge

August 11,2020.

hsp

NOTE:	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No