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

* * *

CRWP-7925-2020

Date of Decision: 10th November, 2020

Pawan

Petitioner

Versus

State of Haryana and others

Respondents

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

* * *

Present: Mr. H.P.S. Ishar, Advocate for the Petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

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Dr. S. Muralidhar, J.

1. Having perused the reply of the Respondents in response to the present petition, which challenges the order dated 30th June, 2020 of the Divisional Commissioner, Rohtak/Respondent No. 2, rejecting the Petitioner's prayer for release on parole to meet his family members, it appears that the Petitioner has undergone an actual sentence of 7 years, 11 months and 21 days in FIR No.401 of 2012 and has been in prison continuously since 13th November, 2012. The custody certificate also shows that he has never been granted parole.

2. Even as regards the details of other registered cases, he is shown to be convicted in FIR No.338, dated 11th November, 2012 under Sections 395 and 397 of IPC and sentenced to life imprisonment for such conviction. In all other cases, he has either been acquitted or served the sentences awarded to him.

3. The Court finds that one of the reasons for rejection set out in the impugned order is that “earlier also he absconded upon coming out on parole”, whereas from the reply now filed, it is evident that he has never been released on parole in the first place.

4. Although the Petitioner has been categorized as a “hardcore prisoner” in terms of Section 2 (aa) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter ‘Act’), under Section 5A (2) of the said Act, he would still be entitled to be considered for temporary release or furlough. Section 5A (2) of the Act reads as under:

“5A. (2) Notwithstanding anything contained in subsection (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 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 is the prisoner so released under this subsection violated any condition of temporary release or furlough, he shall be debarred from such release in future.”

5. It is not disputed by Mr. Ankur Mittal, Additional Advocate General, Haryana, that the Petitioner fulfills the conditions set out in the Section 5A (2) in order to avail the benefit thereof.

6. Further, as regards the report of the Collector-cum-Superintendent of Police, Sonapat, referred to in the impugned order, where it is opined that the Petitioner might abscond and can cause any untoward incident, such opinion, in terms of Section 6 of the Act, has to be based on some material. It would not be sufficient to merely repeat the language of the aforesaid provision while arriving at such opinion.

7. For all the aforementioned reasons, the impugned order dated 30th June, 2020 is hereby set aside and the Petitioner’s parole application is directed to be placed before Respondent No. 2 for fresh consideration, in accordance with law. The order shall be passed not later than 1st December, 2020 and

be communicated to the Petitioner not later than 4th December, 2020. If aggrieved by such order, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

8. The petition is disposed of in the above terms.

**[S. MURALIDHAR]
JUDGE**

**[AVNEESH JHINGAN]
JUDGE**

10th November, 2020

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Whether speaking / reasoned:
Whether reportable :

Yes / No
Yes / No