

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

CRWP No. 2634 of 2021
Date of decision 18.03.2021

Rakesh Kumar @ Goldy

...Petitioner

Vs.

State of Punjab and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Nandan Jindal, Advocate,
for the petitioner.

Ritu Bahri, J.

This petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for setting aside order dated 26.02.2019 (P-2) whereby application filed by the petitioner for grant of parole, has been declined.

Issue notice of motion.

On asking of the Court, Mr. V.G. Jauhar, Dr. D.A.G. Punjab accepts notice on behalf of respondent-State. Let copy of the petition be sent to learned State counsel by learned counsel for the petitioner by today itself.

Learned counsel for the petitioner at the very outset has referred to impugned order dated 26.02.2019 (P-2) to contend that the application of the petitioner for grant of parole has been dismissed on the ground that an amendment has been made in the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016 on 07.01.2016 and now the case of the petitioner falls under Section 4 (5-A) (a) which provides

that if the prisoner who was convicted for capital punishment and is hard

core prisoner, are not entitled for parole. Petitioner in the present case has been convicted under Sections 302/376/201/404/120-B/148/149 IPC by learned trial Court on 24.11.2015

Learned counsel for the petitioner contends that the above said Section 4 (5-A) (a) of the Act has come up for consideration before this Court in ***CWP No. 20679-2018 titled as Jagjit Singh @ Jaggi vs. State of Punjab and others, decided on 18.09.2018*** wherein also the petitioner was convicted under Sections 302/376/404/120-B IPC. He was declined parole on the ground that he is not a prisoner but a hardcore prisoner. This Court while relying upon two judgments i.e ***Sonu @ Arun vs. State of Haryana and others, CRWP No. 1078-2014, decided on 09.02.2015 (DB) and Sukhvir Singh @ Sukha vs. State of Punjab and others, CWP No. 9699-2018, decided on 11.09.2019***, has allowed the writ petition and directions were issued to the respondents to consider the case of the petitioner for grant of parole after considering him as a prisoner and not a hardcore prisoner.

Heard learned counsel for the parties at length.

Reference at the very outset can be made to relevant amendment in the notification dated 07.01.2016 (P-1) which reads as under:-

2. In the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter referred to as the principal Act), in section 2,-

(i) after clause (a) , the following clause shall be inserted, namely:-

“(aa) "hardcore prisoner" means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;" and

(ii) for clause (b) , the following clause shall be substituted, namely:-

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

The above said notification has come up for consideration before this Court in ***CWP No. 2478-2019 titled as Rohit Kumar @ Babby vs. State of Punjab and others, decided on 30.01.2020*** wherein also the application of the petitioner for grant of parole has been declined on the ground that he is a hard core criminal. The writ petition was disposed of with a direction to the respondents to consider the case of the petitioner for grant of parole after considering him as a prisoner and not a hardcore prisoner.

Thus, the provisions of the Amendment dated 07.01.2016 (P-1) would not apply retrospectively and would apply prospectively. The amendment made on 07.01.2016 (P-1) would not be made basis for rejecting the claim of the petitioner for grant of parole. The petitioner was convicted in the year 2015 and after the amendment was made on 07.01.2016, for all intents and purposes, the case of the petitioner ought to have been considered by treating him as prisoner and not hard core criminal, as per Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016.

Applying the ratio of the above mentioned judgments, the present writ petition is allowed and order dated 26.02.2019 (P-2) is set

aside. A direction is given to the respondents to consider the case of the petitioner for grant of parole after considering him as a prisoner and not a hardcore prisoner. This exercise shall be completed within a period of six weeks from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

18.03.2021
G Arora

(ARCHANA PURI)
JUDGE

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