

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

209

**CRWP-2273 of 2020
Date of decision: 15.03.2021**

Satish

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Susheel Gautam, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana for the respondent-State.

SUVIR SEHGAL J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

This criminal writ petition has been filed seeking setting aside of the order 03.01.2020, Annexure P-1, whereby application of the petitioner for release on parole for house repair has been rejected and for grant of Parole for four weeks in view of Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for brevity hereinafter referred to as “the Act”).

Facts, in a nutshell leading to the filing of the present petition, are that the petitioner has been convicted and is undergoing sentence of rigorous imprisonment of ten years in FIR No. 94 dated 06.05.2009 under section 392, 394 and 397, IPC and section 25 of Arms Act, 1954 at PS GRP, Karnal. CRA-S-23-SB-2010 titled as Bhim Singh and others versus State of Haryana, against the conviction and sentence passed by the trial court was dismissed by this Court on 10.03.2015. The petitioner is lodged in District Jail, Panipat and has undergone a

continuous sentence of more than five years. He has old parents and there is no

other member in the family to take care of them. He submitted an application dated 31.12.2019, Annexure P-1, for parole for house repair which has been rejected by respondent No.5 vide the impugned order on the ground that he is a “hardcore prisoner”.

Counsel for the petitioner has placed reliance upon sub-section (v) of section 2(aa) of the Act to submit that as the petitioner had surrendered within ten days from which date he should have so surrendered on the expiry of the parole period, he could not be labelled as a “hardcore prisoner”.

The respondents have filed reply and opposed the petition on the ground that the petitioner is a “hardcore prisoner” and has been convicted for heinous crimes in three different criminal cases and had violated the condition of temporary release by surrendering late when he was previously released on parole, therefore, he is debarred from temporary release/furlough as provided in proviso to section 5A(2) of the Act.

I have heard the counsel for the parties and considered their arguments.

Before dealing with the argument raised by the counsel for the petitioner, section 2 (aa) and section 5A of the Act deserve to be noticed and are reproduced hereunder:

"(aa) "hardcore prisoner" means a person-

(i) Who has been convicted of -

(1) robbery under section 392 or 394 IPC;

(2) dacoity under Section 395, 396 or 397 IPC;

(3) kidnapping for ransom under section 364-A IPC;

(4) murder or attempt to murder for ransom or extortion under Section 387 read with 302 or section 387 read with 307 IPC;

(5) rape with murder under section 376 read with 302 IPC

(6) rape with a woman below sixteen years of age'

- (7) rape as covered under Section 376A, 376D or 376E IPC.*
- (8) serial killing i.e. murder under section 302 IPC in two or more cases in different First Information Reports;*
- (9) murder under section 302 IPC, if the offender is a contract killer as apparent from the facts mentioned in the judgment of the case;*
- (10) lurking house trespass or house breaking where death or grievous hurt is caused under section 459 or 460 IPC;*
- (11) either of offences under sections 121 to 124A IPC;*
- (12) immoral trafficking under Section 3, 4 or 5 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956 involving minors or under Section 366-A, 366-B, 372 or 373 IPC.*
- (13) offence under section 179(c) or 18(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985); or*
- (14) offence under section 14 of the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012); or*
- (ii) who during a period of five years immediately before his conviction has earlier been convicted and sentenced for commission of one or more offences mentioned in Chapter XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months;*

Provided that while counting the period of five years, the period of actual imprisonment or detention shall be excluded;

Provided further that if a conviction has been set aside in

appeal or revision, then any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

(iii) who has been sentenced to death penalty; or

(iv) who has been detected of using cell phone or in possession of cell phone/sim card inside the jail premises; or

(v) who failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act.

Provided that the State Government may, by notification include any offence in the list of offences mentioned above."

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"5A. Special Provisions for temporary release of hardcore prisoners -

(1) Notwithstanding anything contained in Sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:

Provided that a hardcore prisoners may be released on temporary basis to attend the marriage of his grand child or sibling; or death of his grand parent, parent, grand parent in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty eight hours, to be decided by the concerned Superintendent of Jail:

Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage his daughter for ninety six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty-four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.

(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 years 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 released in future."

In their reply, the respondents have mentioned that the petitioner has been convicted in three criminal cases and have given the details of the cases, which are reproduced as under:-

(i) Convicted in FIR No. 70 dated 11.03.2009 under section 394, 397, 34, IPC and Section 25(1)(b)(a) of Arms Act, 1959, registered at P.S. GRP, Karnal and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 2,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year, vide judgment dated 18.11.2009 passed by the Addl. Sessions Judge, FTC, Karnal. The sentence has been executed, but the fine has not been paid.

(ii) Convicted in FIR No. 94 dated 06.05.2009 under section 394, 397, 34, IPC, under section 25(1)(b)(a) of Arms Act, 1959, and section 141 of Railways Act, 1989, at P.S. GRP, Karnal and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 2,000/- and

in default of payment of fine, to undergo rigorous imprisonment for one year, vide judgment dated 19.11.2009 passed by the Addl. Sessions Judge, FTC, Karnal. The petitioner is undergoing this sentence.

(iii) Convicted in FIR No. 36 dated 12.04.2009 under section 395, 397, IPC at P.S. GRP, Panipat and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs. 5,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months, vide judgment dated 12.01.2011 passed by the Addl. Sessions Judge, Panipat. The sentence in this case is to commence after bail/ completion of sentence in FIR No. 94 dated 06.05.2009.

In all the three cases, the petitioner has been convicted for offences under section 394 and 397, IPC, besides other offences. He, therefore, falls within the ambit of definition of “hardcore prisoner” under sub-section (i) of section 2(aa) of the Act. The petitioner has been termed as hardcore prisoner on account of the convictions recorded against him. He is a hardcore prisoner from the beginning itself and not on account of the fact that he surrendered late after expiry of period of parole in December, 2015.

A closer look at the provision contained in section 2(aa), *ibid*, shows that a person who surrenders later than ten days after the period of his temporary release is over, is also to be considered as a hardcore prisoner. Such a person forms a separate category, which is distinct from the category of hardcore prisoner under which the petitioner falls. Therefore, the judgment of this Court in ***CRWP-1104-2017 titled as Balwan Singh versus State of Haryana and others***, decided on 24.01.2018, will not help the petitioner.

of an amendment in the statute for temporary release of hardcore prisoners, which is an exception to section 3 and 4 of the principal Act. Sub-section (1) of Section 5A provides for temporary release of a hardcore prisoner for attending the marriage or death of close relations specified therein, for a period of 48 or 72 or 96 hours under police escort to be decided by the Superintendent of the Jail. Sub-section (2) of Section 5A provides for temporary release or furlough of a hardcore prisoner, who has completed five years imprisonment and has not been awarded a death penalty, nor any major punishment by the Superintendent of Jail, which has been judicially appraised by the concerned District and Sessions Judge. This provision has two riders, the first is that while computing the period of five years, a period of not more than two years spent as an under-trial shall be counted and the second is that the temporary release is barred in case of violation of any condition imposed during previous temporary release or furlough.

When examined in the light of the above provision, it is clear that the petitioner is debarred from future temporary release or furlough. The petitioner was released on parole for a period to four weeks for house repair on 26.11.2015 from District Prison, Karnal, but instead of surrendering on 25.12.2016, he surrendered late by one day. As such, he violated the condition of temporary release. On account of his overstay, the Superintendent Jail, District Prison, Karnal, forfeited two days remission earned by the petitioner, which has been judicially appraised by the District and Sessions Judge, Karnal, vide order dated 05.02.2016, Annexure R-1. Not only a punishment has been imposed on the petitioner, but it has also been appraised by a judicial authority.

A Coordinate Bench of this Court **Hemant alias Buntty versus State of Haryana and others** 2020(4) RCR (Criminal) 278, observed as under:

“The second proviso further clarifies it as it lays down that if the prisoner, so released under the subsection, violates any condition of temporary release, he shall be debarred

from such release in future. Thus, it can safely be considered that the said provision is for the hardcore prisoner who was as such from the beginning of sentence after conviction as in such case, if they violated any condition of temporary release or furlough, they would be debarred forever from temporary release in future.”

The release of a prisoner on parole or furlough is not a right, but a concession granted to him under the statute, which is subject to the fulfillment of the conditions prescribed therein. As the petitioner does not fulfill the conditions laid down under the Act, he is not entitled to be released on parole.

There is yet another hurdle in the way of the petitioner. The petitioner has suppressed the fact that besides conviction in FIR No. 94 dated 06.05.2009, he stood convicted in two other criminal cases. The details of the convictions have been noticed above. As the petitioner has approached the court with tainted hands and has concealed material facts regarding his antecedents, is not entitled to any relief.

The petition is, accordingly, dismissed.

15.03.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No