

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CRWP-3770-2021

DATE OF DECISION : 30.04.2021

RAMESH

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.P.S.Bajwa, Advocate
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana
for the respondents.

(The aforesaid presence is being recorded through video conferencing since the proceedings
are being conducted in virtual Court).

Suvir Sehgal, J.

Vide the instant petition filed under Article 226/227 of the
Constitution of India, the petitioner seeks issuance of a writ in the nature of
certiorari for quashing the impugned order dated 02.03.2021 (Annexure P-
4) whereby respondent No. 3 has declined to release the petitioner on parole
for renovation of his house.

Facts, in brief, are that the petitioner has been convicted on
16.02.2021 in case FIR No.45 dated 18.01.2011 registered at P.S.Ratia,
District Fatehabad for offences punishable under Sections 396, 120-B, 412

and 482 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for life. Appeal bearing CRA-D No.180-DB of 2021 filed by the petitioner before this Court has been admitted and is pending. The petitioner is undergoing sentence in Central Jail-II, Hisar. The petitioner sought parole for the purpose of renovation of his old house and through his mother submitted an application dated 23.02.2021 (Annexure P-1) which has been recommended by the Sarpanch, Gram Panchayat, Dharsul Khurd who certified that the house of the petitioner is in need of repairs and there is no threat to the peace of the area in case the petitioner is released on parole. This application has been rejected vide order impugned herein.

Counsel for the petitioner has submitted that the petitioner has undergone more than nine years of imprisonment and his case is covered under Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for brevity hereinafter referred to as “the Act”). The petition has been opposed by the State Counsel, who has appeared on advance notice, and filed a reply wherein it has been stated that the petitioner is a hardcore prisoner and he does not fulfill the conditions for temporary release as laid down in Section 5-A of the Act.

We have considered the submissions of the parties.

The expression “hardcore prisoner” has been defined in Section 2 (aa) of the Act and includes a person who has been convicted for dacoity under Sections 395, 396 or 397 of the Indian Penal Code. On account of his conviction under Section 396 IPC, the petitioner falls within the

category of a “hardcore prisoner”. A special provision has been made for release of hardcore prisoners on temporary basis under Section 5A of the Act. Sub Section (2) thereof, which is relevant for the purposes of the present case, is reproduced hereunder:-

(2) Notwithstanding anything contained in sub- Section (1), a convicted hardcore prisoner who has 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 of more than two years, while counting five years 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 release in future."

The special provision has been introduced in the statute by way of an amendment vide notification dated 18.09.2015 (Annexure R-2) is an exception to Sections 3 and 4 of the Principal Act. It 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 is subject to two riders, firstly that while computing the period of five years, not more than two years spent as an under trial shall be counted and secondly that the temporary release is barred in case the hardcore prisoner violates any condition imposed during previous temporary release or furlough.

In other words, the requirement of the first rider is that the hardcore prisoner should have remained incarcerated for a maximum period of two years as an under trial and the remaining period out of the five years should have been spent in prison after the conviction.

As per Custody Certificate (Annexure P-3), the petitioner has spent nine years eight months and twenty seven days, i.e., from 19.05.2011 to 15.02.2021 in prison as an under trial but the imprisonment period after his conviction is only for a few days. In terms of the first proviso, not more than a period of two years of imprisonment as an undertrial, can be considered while computing the period of five years. A minimum period of three years is required to be spent in custody after conviction, which condition the petitioner does not satisfy. The rejection of the application by respondent No. 3 is precisely for this reason. Therefore, there is no illegality or infirmity with the impugned order, which does not call for any interference.

Petition is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(SUVIR SEHGAL)
JUDGE

30.04.2021
kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No