

CRWP No.5032 of 2021

Date of Decision: 13.09.2021

... Petitioner

Versus

... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Rahul Deswal, Advocate for the petitioner.

Mr. Vivek Saini, Addl. A.G.Haryana.

SANT PARKASH, J.

[The aforesaid presence is being recorded through video conferencing

since the proceedings are being conducted in virtual court]

Prayer in the instant petition is for issuance of a writ in the nature

Learned counsel for the petitioner submits that the petitioner filed

during his confinement in jail and a case under Section 42-A of Prisons Act, 1894 is pending against him. He has not completed 5 years of imprisonment as per Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Act. Learned counsel submits that under the said case, the petitioner is on bail and has not been convicted till date. He further submits that the petitioner availed two special parole from 18.07.2020 to 09.08.2020 and from 19.02.2021 to 04.04.2021 and on both occasions, he surrendered well within the time. He was on regular bail from 28.01.2017 to 18.04.2019 for two years and three months and never misused the concession of regular bail. Further in support of his arguments, learned counsel places reliance on directions dated 24.03.2020 and 11.05.2021 issued by High Powered Committee of this Court with regard to grant of special parole to jail inmates in view of prevailing situation of Covid-19 pandemic.

Per contra, leaned State counsel places reliance on para 5 of the reply filed on behalf of the respondents wherein it has been submitted that the petitioner falls under the category of Hardcore Prisoner as per the provision contained in para 2 (aa) (iv) of Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 as a mobile phone was recovered from the possession of the petitioner during his confinement in jail and an FIR No.85/2016 under Section 42(A) of Prisons Act was registered against him at Police Station Bhondsi, Gurugram, which is pending in the Court of learned SDJM, Sohna, Gurugram.

Learned State counsel although opposes the prayer made on behalf of the petitioner, he points out that in a similar matter, vide order dated 14.09.2020 passed in CRWP No.1890 of 2020, a Coordinate Bench of this Court while keeping in view the conflicting views on the interpretation of the

definition of “Hardcore Prisoner” under Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, considered that the law in this regard should be settled by a Full Bench of three learned Judges and referred the following question for decision by a larger Bench of three Judges:-

“For the purpose of interpretation of the expression 'hardcore prisoner' under Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, is it necessary that the prisoner, who is detected using or in possession of a cell phone/SIM card inside the jail premises, should, in order to be disentitled to temporary release on parole or furlough, be convicted by a Court for the corresponding offence under Sections 42/42A of the Prisons Act as applicable to Haryana or even if only punished by the prison authorities under Section 46 of the Prisons Act?”

Accordingly, the said Coordinate Bench passed the orders to place the papers before Hon'ble the Chief Justice for constituting an appropriate Bench.

At this stage, learned counsel for the petitioner prays for permission to withdraw the instant petition.

Accordingly, the present petition is dismissed as withdrawn.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

13.09.2021
Maninder

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