

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

CRWP-7279-2021

Date of Decision: 06.08.2021

SUKHBIR SINGH @ KALA

....PETITIONER..

Versus

STATE OF HARYANA AND ANR.

....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present : Mr. Lalit Kumar, Advocate,
for the petitioner.

Mr. Vivek Saini, Additional Advocate General, Haryana.

SANT PARKASH , J.

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

Instant petition has been filed under Article 226/227 of the Constitution of India read with Section 3(1) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short, "Act") for issuance of writ in the nature of certiorari for quashing order dated 14.07.2021 (Annexure P-4) passed by respondent No.2, whereby, prayer of the petitioner seeking parole has been rejected. Further prayer is for issuance of direction to the respondents to release the petitioner on parole for a period of four weeks for treatment of his ailing wife.

The petitioner was tried in FIR No.645 dated 24.08.2015 registered under Sections 364-A, 328, 420, 468, 471 and 473 34 IPC at

Police Station City Thanesar, District Kurukshetra and accordingly, he has been convicted and sentenced for life imprisonment vide judgment dated 25.04.2019. Against the judgment of conviction and order of sentence, petitioner filed an appeal before this Court, which is still pending admitted for final adjudication.

Learned counsel for the petitioner submits that the petitioner has undergone approximately 5 years and 6 months out of total sentence. His wife and two minor children are living alone in the village. He next submits that since the doctor has advised surgery of his wife for treatment of tumor in uterus, therefore, his presence is required to look after her and kids. He further submits that there is no other male member in the family.

Learned counsel for the petitioner further submits that earlier the petitioner approached this Court by way of filing CRWP No.6262 of 2021 on the same ground, which was disposed vide order dated 09.07.2021, with a direction to the petitioner to move an application/representation for grant of emergency parole before the competent authorities, who shall examine and decide the same within one month from the date of receipt of copy of this order after ascertaining the medical condition of the wife of the petitioner. Accordingly, the wife of the petitioner approached the Superintendent of Prison, District Prison, Karnal/respondent No.2 for grant of emergency parole for 04 weeks for her operation along with medical reports, but respondent No.2 without considering the condition of his wife, passed a non-speaking order and rejected her/his prayer.

On the other hand, learned State counsel strongly opposes the

submissions made by learned counsel for the petitioner on the ground that the petitioner is a hardcore criminal and prays for dismissal of instant petition.

After having heard learned counsel for the parties and perusing the paper book, this Court is of the considered opinion that the authority rejecting the parole vide order dated 14.07.2021 (Annexure P-4) has exercised its jurisdiction on the basis of the facts collected for considering the request of the petitioner for releasing him on parole. Relevant portion thereof reads as under:-

"The above said convict was convicted under Section 364-A read with Sections 120-B, 420, 468, 471 & 473 IPC. Hence, the convict falls under the category of Hardcore prisoner as per Section 2(aa(i) (3) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act 2013. Ready for reference:-

"Hardcore prisoner" means a person who-

(i) who has been convicted of:

3"Kidnapping for ransom, under Section 364-A IPC"

That, in view of the above mentioned facts and circumstances, the convict is not entitled for any kind of parole/furlough as he has not completed required period i.e. five years (the five year imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment) as per provisions of Section 2(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Rules 2015,

Reproduced as under:-

Section 5(A) (2):- "notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner 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 District and Sessions Judge.

Provided that the five year imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment.

Hence, keeping in view the above mentioned circumstances, and going through complete records the request of Sukhbir Singh @ Kala s/o Sultan Singh R/o Village Amargarh, Police Station Butana, District Karnal for parole has been considered and filed."

The solitary ground for seeking parole is for treatment of ailing petitioner's wife, does not appeal to logic at all and cannot be said to be a justifiable ground for granting the concession of parole to the accused, who is a hardcore criminal. Otherwise, there must be other relatives in the family of the petitioner as well as his wife and in our considered opinion, they can certainly take care of the wife of the petitioner during treatment.

Otherwise also, it is the subjective satisfaction of the authority concerned to evaluate the circumstances seeking parole. Unless and until some arbitrariness or malafide is apparent in the order of the said authority, only then, this Court should intervene under Article 226 of the Constitution of India.

In view of the above, we do not find any merit in the instant petition and same is accordingly dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

06.08.2021
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whether speaking/reasoned: Yes/No
whether reportable: Yes/No