

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

CRWP-9712-2021

Date of decision: 15.11.2021

Sonu

.... Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Suresh Kumar Kaushik, Advocate for
Mr. Dharamvir Sharma, Advocate
for the petitioner.

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

PANKAJ JAIN, J.

By way of present criminal writ petition, the petitioner has challenged order dated 06.09.2021 (Annexure P-2) passed by Superintendent, District Prison, Karnal, District Karnal-respondent No.5 whereby application filed by the petitioner seeking temporary release has been dismissed.

The petitioner was sentenced vide judgment dated 19.04.2018 and convicted for life imprisonment vide order dated 26.04.2018 by the learned Additional Sessions Judge, Panipat in FIR No.65 dated 24.02.2016, under Section 302 IPC, registered at Police Station Sadar, Sonipat, District Sonipat. Initially lodged in District Jail, Sonipat on 01.03.2016 and remained as undertrial upto 25.04.2018, then petitioner was admitted in District Prison, Karnal on 11.08.2018.

An appeal preferred by the petitioner against the aforesaid judgment and order of sentence '*CRA-D-542-DB of 2018*, titled as *Sonu vs. State of Haryana*' is pending before this Court.

The petitioner approached authorities through her mother for temporary release. The application has been declined by respondent No.5 on the ground that the petitioner being accused in the case under Section 42A of 'The Haryana Good Conduct Prisoners [Temporary Release] Act, 1988) falls within the category of 'hardcore prisoner' and thus can be released on parole only on completion of 5 years from the day he become hardcore.

On notice, the respondents have filed reply wherein it has been pleaded that:-

“The petitioner falls in category of “hardcore prisoner” as per clause (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Rules 2013, which is reproduced as under:-

(aa) “hardcore prisoner” means a person, who-

“(iv) Has been detected of using cell phone or in possession of cell phone/Sim Card inside the jail premises;” (Copy of Act of 2013 attached is as annexure R-II)

5. That, a hardcore prisoner can be released on temporary basis or on furlough after completion of five years of imprisonment as per provisions of Section 5A of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act 2015 (Copy of Rule of 2015 attached as annexure R-III) which is reproduced as under:-

Rule 2 (2) sub section (1) “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 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 if the five year imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment;

Provided further that if prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future”.

6. That, the petitioner/convict has undergone imprisonment only 03 years, 06 months and 08 days imprisonment as on 19.10.2021 after the date on which he was become a hardcore prisoner on 12.04.2018 such as a cell phone was recovered from the petitioner while confinement at District Jail, Sonipat as undertrial prisoner. As per provisions contained in the Haryana Good Conduct Prisoners (Temporary Release) Act, 2015, according to which the petitioner/convict shall be entitled to be released on parole after completion of continuous five years of imprisonment after the date on which he was become a hardcore prisoner. Thus, the petitioner may be entitled for temporary release or furlough only after completion of five years imprisonment after being become a hardcore prisoner on dated 12.04.2018. Now the petitioner is not entitled to any parole as on date as per the provisions of Para 2(2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015.”

We have heard learned counsel for the parties and gone through the pleadings.

In our considered view, the State authorities misread the bare provisions of law which resulted in declining the prayer made by the petitioner. Temporary release of the prisoners in the State of Haryana is governed by 'The Haryana Good Conduct Prisoners [Temporary Release] Act, 1988 and rules framed thereunder, i.e. 'The Haryana Good Conduct Prisoners [Temporary Release] Rules, 2007.

Vide amendment Act No.21 of 2013, Section 2(a)(a) was incorporated in the 1988 Act whereby 'hardcore prisoner' was defined as:-

“(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 or section 387 read with 307 IPC;
 - (5) rape with murder under section 376 read with section 302 IPC;
 - (6) rape with a woman below sixteen years of age;
 - (7) rape as covered under section 376-A, 376-D or 376-E 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 offence under sections 121 to 124-A 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 17(c) or 18(b) of the Narcotic 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 except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions 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.

Explanation.- For the purposes of this section, “IPC” means the Indian Penal Code, 1860 (Central Act 45 of 1860)].”

By way of the amending Act, Section 5A was also incorporated. It was later on substituted by Haryana Act No.8 of 2014.

Section 5A as it stands on statute book today reads:-

“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 of 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 hardcore prisoner, who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed five years of sentence as a convict in jail excluding the under trial period and has not been awarded any minor or major penalty by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge:

Provided 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.”

Undoubtedly, the State is within its right to prescribe conditions for temporary release of the prisoners. However, the same cannot be beyond the statute.

Learned State counsel may be right in saying that the petitioner falls within the category of 'hardcore prisoner' as defined under Section 2(a)(a). However, the question arises as to whether the petitioner can be denied the right of consideration for temporary release on the ground that he has not completed 5 years of imprisonment from the day he became 'hardcore prisoner'.

As per the custody certificate placed on record by the State counsel, details of custody period of the petitioner are as under:-

S.No.	Particulars	Period	Years	Months	Days
1.	Custody as undertrial	01.03.2016 to 25.04.2018	02	01	25
2.	Actual custody period after conviction	-	03	06	02
3.	Actual undergone period including custody as undertrial	-	05	07	27

From the custody certificate, it is thus clear that the petitioner has undergone 2 years, 1 month and 25 days as undertrial and 5 years, 7 months and 27 days actual custody (including custody as undertrial). Section 5A(2) nowhere prescribes that the required 5 years imprisonment has to be counted from the day, the petitioner becomes a 'hardcore prisoner'.

Section 5A(2) having an overriding effect over Section 5A(1) prescribes that the convicted hardcore prisoner who has not been awarded death penalty, will be entitled for temporary release only after completing 5 years imprisonment. It further mandates that the said 5 years imprisonment shall not include imprisonment during trial beyond 2 years.

In the present case, out of actual undergone period of custody of the petitioner, i.e. 5 years, 7 months and 27 days, custody of the petitioner as undertrial beyond 2 years, i.e. 1 month and 25 days has to be excluded. On excluding the aforesaid period of 1 month and 25

days, the petitioner having completed more than 5 years is thus entitled to be considered for temporary release.

The objection recorded by the State while declining the application for temporary release of the petitioner cannot be sustained in law.

In view of the aforesaid facts and circumstances of the case, we find that impugned order dated 06.09.2021 passed by the Superintendent, District Prison, Karnal, District Karnal-respondent No.5 deserves to be set aside and we direct that the petitioner be released on parole for 4 weeks.

The petition is disposed off accordingly.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed off.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

15.11.2021

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No