

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

CRWP No.10761 of 2021

Date of Decision: 22.11.2021

IQBAL AHMAD

.....Petitioner

V/s.

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.**
 HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ritesh Tomar, Advocate,
 for the petitioner.

Mr. Sharan Sethi, Additional Advocate General, Haryana.

M.S. RAMACHANDRA RAO, J. (Oral)

This petition is filed by the petitioner seeking emergency parole for four weeks for attending marriage of his real brother fixed for 23.11.2021.

It is not in dispute that the petitioner had been convicted vide judgement and order dt. 23.12.2020 and 06.01.2021 respectively passed by the learned Additional Sessions Judge, Panchkula in case No. SC/16/2017, FIR No.107 dt. 05.07.2016, under Sections 460, 302 read with Section 34, Section 394 read with Section 397 and Section 120-B IPC. The petitioner had preferred an appeal bearing No.CRA-D-215-2021 which was admitted and recovery of fine was stayed vide order dt. 23.04.2021 passed by this Court.

According to the petitioner, his real brother, namely;
Gurchasham Mustaq Ahmed is getting married on 23.11.2021 at District

Badau, Uttar Pradesh and the petitioner wants to attend the said marriage as his presence is said to be required for conducting certain rites and ceremonies of the marriage of the real brother.

Reliance is placed on Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short “the Act”) and it is stated that the petitioner had made a request on 08.11.2021 to respondent No.3-the Superintendent, Central Jail, Ambala for grant of parole, but no order has been passed thereon.

Mr. Sharan Sethi, Additional Advocate General, Haryana has appeared on behalf of respondent-State and has contended that there is one other case pending against the petitioner i.e. FIR No. 708 dt. 19.12.2020 under Section 18 of the NDPS Act, Section 120-B of the IPC and Section 42-A of the Prisons Act, 1952 registered with Police Station Baldev Nagar. He has further contended that the petitioner’s request for grant of parole cannot even be initiated by the office of respondent No.3 during the pendency of the aforementioned FIR, in view of certain directions received from the Financial Commissioner and Principal Secretary to Government of Haryana, Jails Department vide memo dt. 16.02.2005 which prohibits initiation of any proceedings for grant of parole or furlough by the Superintendent of the Jail if a convict is not on bail in all cases pending against him. It is also contended that under Sub-Section 2 of Section 5-A of the Act, temporary release or furlough cannot be permitted of a convicted hardcore prisoner if he has not completed five years imprisonment. Reference is also made to a proviso to the said Sub-Section 2 of the Section

5-A of the Act which specifically states that the five year imprisonment shall not include imprisonment during trial period for more than two years.

Learned State counsel contends that by applying the standard of five years imprisonment bar as per Sub-Section 2 of the Section 5-A of the Act and also proviso thereto, the petitioner would not fall in the said category as a convicted hardcore prisoner and so he is not entitled to be released on parole. He also reiterated that the petitioner has no right to be released on parole which is a discretionary act of State after considering all the relevant circumstances.

We have considered the submissions of both sides.

The State of Haryana had enacted the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which provides for consideration of the release of convicted prisoners on parole in certain circumstances. There is no dispute that parole or furlough is a concession granted to a prisoner, but grant of such concession is regulated by the statute and only on fulfillment of conditions prescribed therein, a prisoner would be entitled to be released on parole. It is trite that the statutory powers to release a prisoner on parole or furlough is to be exercised objectively, keeping in view the intention of the Legislature and the purpose of admitting a prisoner to parole or furlough.

The question, therefore, to be considered is “whether in exercise of the supervisory jurisdiction conferred on this Court under Article 226 of the Constitution of India, can this Court interfere with the

decision taken by the respondents in refusing to release the petitioner on parole in the facts and circumstances of this case?”

According to the counsel for the petitioner, ever since the petitioner has been arrested in 2016, he has been in Jail and therefore, he has to be treated as having fulfilled the requirement of 5 years imprisonment provided under Sub-Section 2 of Section 5-A of the Act. But in our considered opinion, the manner of computing the five years period of imprisonment is indicated by the proviso to Sub Section 2 of Section 5-A of the Act which specifically directs that the five years imprisonment shall not include imprisonment during trial period for more than two years.

If we apply this test, the five year imprisonment would include only two years during trial and three years post-conviction and rest of the period of imprisonment during trial period (which is more than two years) has to be ignored. Applying this test, since the date of conviction of the petitioner is only 06.01.2021, the petitioner does not fulfill this requirement.

In the decision rendered in the case of Satnam Singh @ Satta Vs. State of Haryana and another cited by the counsel for the petitioner, no doubt a prisoner, who was a hardcore criminal, was directed to be released on parole under Section 5-A (2) of the Act on completion of period of 4 years 9 months and 10 days, but in that judgment there is no consideration by the Division Bench of the proviso to Sub-Section 2 of Section 5-A of the Act referred to above. The judgement, therefore, appears to have been rendered *per curiam* and cannot operate as a precedent.

In Sachin @ Lucky Vs. State of Haryana and others cited by counsel for the petitioner, it was held that the petitioner therein did not fall under the category of “hardcore prisoner” and therefore, parole was directed to be granted and there was no consideration of Sub Section 2 of Section 5-A of the Act or the proviso thereto.

In Surjeet Singh Vs. State of Haryana and others cited by learned counsel for the petitioner there is a discussion by the learned Single judge of this Court that the period of five years imprisonment for grant of parole and furlough cannot be counted from the date the prisoner has fallen in the category of “hardcore prisoner”. It is observed that the petitioner in that case having already completed more than five years imprisonment which does not include more than two years imprisonment as under trial, he became entitled to grant of parole or furlough. The said decision applies the proviso to Sub Section 2 of Section 5-A of the Act and since in that case the petitioner fulfills the requirement of five years period of imprisonment even after considering two years period of imprisonment as under trial, parole was granted. But the instant case of the petitioner is otherwise.

In Prince Pal Singh Vs. State of Haryana and another cited by the counsel for the petitioner, parole was granted to the petitioner therein on the ground that the petitioner did not fall under the category of “hardcore prisoner” and there was no occasion for the Court to go into the issue of computation of the five years period which is prescribed by the statute to be taken into account while considering the question of grant of parole.

In our considered opinion, since the petitioner has not completed five years period of imprisonment, computed in accordance with the proviso of Sub Section 2 of Section 5-A of the Act as of date, and also since the petitioner is also an accused in another case i.e. FIR No. 708 dt. 19.12.2020, and is not on bail in the said case, no exception can be taken to the decision of the respondents in not granting parole to the petitioner. Accordingly, the Writ Petition fails and the same is dismissed as such.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

November 22, 2021
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>