

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

224

**CRWP-942-2020
Date of decision: 16.03.2022**

PAHLU

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

Instant petition has been filed under Article 226/227 of the Constitution of India for seeking of quashing of order dated 02.12.2019 (Annexure P-1).

Learned counsel for the petitioner contends that the respondents have wrongly averred that the petitioner is a hard-core prisoner and was not entitled to the concession of parole under the Haryana Good Conduct Prisoner (Temporary Release) Act 1988. Learned counsel submits that the petitioner even otherwise fulfills the conditions prescribed under the Act for availing the concession of parole as a period of 05 years has since then lapsed. Learned counsel has further placed reliance upon an order dated 02nd May, 2012 passed in Criminal Writ Petition No.57 of 2012 titled as Ashok Kumar Vs. State of Haryana & Others to contend that despite an accused having over-stayed and having been separately punished for the said offence, his case can be considered for grant of parole.

Sh. Kanwar Sanjiv Kumar, learned Assistant AG Haryana has referred to the averments contained in the Haryana Good Conduct Prisoner (Temporary Release) Act 1988 to contend that the petitioner had absconded from

parole for a period of 11 years 03 months and 02 days and as such was covered under the category of hard-core prisoner as per the provisions contained in Para 2(aa)(v) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013. It is further pointed out that the decision whereby the petitioner was declared a hard-core prisoner is not a subject matter of challenge in the proceedings before this Court. The relevant extract of the reply furnished by the respondent-State is reproduced as under:-

2. That, as per the Section 6(1) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, substituted vide Section 5 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 (Annexed as Annexure-R1), reproduced as this under, "Notwithstanding anything contained in sections 3 and 4, no prisoner shall be entitled to be released under this act if, on the report of the District Magistrate, the State Government or an officer authorized by it in this behalf is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace. "

3. That, the petitioner was earlier released on 04 weeks parole on 02-12-2002 and was directed to surrender at Jail gate on 31-12-2002 but the petitioner did not surrender on due date and absconded from parole for which a case FIR No. 271 dated 01-05-2003, u/S 8/9 HGCP ACT, PS City Gurugram was registered against the petitioner and the petitioner was later on arrested by local police on 02-04-2014 and lodged in this prison and the petitioner has been sentenced as sentence already undergone in this case by the Ld. Court of Sh. Amit Nain, Judicial Magistrate Ist Class, Gurugram on 04-11-2016. That, since the petitioner had absconded from parole for 11 Years 03 Months and 02 Days, hence the petitioner was covered under the category of hard core prisoner as per the provisions contained in Para 2 (aa) (v) of the Haryana Good

Conduct Prisoners (Temporary Recleave) Amendment Act, 2013 (placed as Annexure- R2) as under:

2 {aa): "Hardcore Prisoner" means a person

(v) who fails to surrender himself within the period of ten days from the date of which he should have so surrendered on the expiry of the period for which he was released under this act.

In this regard, this is to submit before the Hon'ble High Court that the provisions regarding temporary release of provisions on parole/furlough are contained in Section 5A of Haryana Good Conduct Prisoners (Temporary Release) Act 1988 amended vide Haryana Good Conduct Prisoners (Temporary) Release) Amendment Act 2015 (Annexed as Annexure-R3), according to which, "A convicted hardcore prisoner, who 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 minor or major penalty 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 for more than two years while counting five years of imprisonment.

That, since the petitioner has completed five years of his Sentence, hence, the 06 weeks agriculture parole case of the petitioner was initiated and forwarded to the District Magistrate, Nuh with a copy to the competent authority i.e. Commissioner, Gurugram Division, Gurugram vide this office letter No. 12687-89 dated 14-09-2019 and the 06 weeks agriculture parole case of the petitioner has already been considered by the competent authority (Respondent No. 3) i.e. Commissioner, Gurugram Division, Gurugram and after due consideration, the 06 weeks agriculture parole case of the petitioner has rightly been rejected by the competent authority (Respondent No. 3) i.e. Commissioner, Gurugram Division,

Gurugram as per the provisions contained in Section 6 (1) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, Substituted vide Section 5 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 (Annexure) -R1) vide their office letter No. 172-6/AP/2019/6645-46 dated 02-12-2019 (Copy of the same annexed by the petitioner as Annexure P-1).

4. That, it is submitted before the Hon'ble High Court that the petitioner was convicted and sentenced by Ld. Court of Dr. Bharat Bhushan Parsoon, Addl. Sessions Judge, Gurugram on 27-04-1999 in case FIR No.124/1991, U/s 148/149/302/325/326 IPC, PS Nuh for Life Imprisonment with fine Rs. 1,800 /-I/ d 11 Months RI [Fine Not Paid] and is presently undergoing this sentence.

I have considered the submissions made by the respective parties. It is undisputed that the petitioner falls under the category of hard-core prisoner and that the order under challenge does not suffer from any illegality, perversity or non-appreciation of the material facts.

In view thereof, the order dated 02.12.2019 (Annexure P-1) cannot be held to be bad, illegal, perverse or suffering from mis-appreciation of the facts. The same is accordingly affirmed. Needless to mention that in case the petitioner prefers any separate application for being extended the concession of parole, the State shall take appropriate action in accordance with law.

Dismissed.

(VINOD S. BHARDWAJ)
JUDGE

March 16, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>