

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

**Criminal Writ Petition No.4370 of 2022
Date of Decision:-29.08.2022**

Vikas

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Chandra Shekhar Singh, Advocate
for the petitioner.

Mr. Saurabh Mago, AAG, Haryana.

NIDHI GUPTA, J.

The petitioner has filed the present Criminal Writ Petition under Article 226 of the Constitution of India, seeking the issuance of a writ in the nature of mandamus for directing the respondents to grant parole to the petitioner for 4 to 6 weeks to enable him to repair his old residential house, which is stated to be in a very bad condition. The petitioner has sought this concession u/s 3 (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter 'Act of 1988'), read with Rule 8 of the Haryana Good Conduct Prisoners (Temporary Release), Rules, 2007.

Brief facts are that the petitioner has been convicted vide

judgment of conviction and order of sentence dated 20.11.2019 passed by the Id. Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women and Children), Jagadhari, Yamuna Nagar, and has been sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.30,000/- under section 6 of the POCSO Act 2012, to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- under section 366 IPC, and to undergo rigorous imprisonment for three years and pay a fine of Rs.5000/- under section 363 IPC, arising out of FIR No. 156 dated 6.5.2017, registered at Police Station Farak Pur, Yamunanagar.

It is stated that against above said order, the petitioner has filed Criminal Appeal No. CRA-D-111-2020 titled as 'Vikas versus State of Haryana' which is pending in this Court.

Upon notice, the respondent State of Haryana appeared and filed reply by way of affidavit of Deepak Hooda, Deputy Superintendent, District Jail, Yamunanagar on behalf of both the respondents.

Matter was adjourned to enable Counsel for the petitioner to go through the Haryana Good Conduct Prisoners' (Temporary Release) Amendment Act, 2022. The only contention raised by the counsel for the petitioner before us is that the petitioner is required at home as his old structured residential house is in urgent need of repair, and there was reasonable apprehension that any mishap may occur upon the onset of the rainy season. When questioned regarding other members of the petitioner's family who may do the needful, counsel for the petitioner submitted that the only other male member is the petitioner's father who is about 68 years old and infirm senior citizen and is therefore unable to carry out the necessary

repairs.

Counsel for the petitioner has also placed reliance upon order of this Court passed in CRWP No. 10862 of 2020, titled as “Kulwinder Singh alias Kinda versus State of Punjab and others”, where the petitioner therein had been granted parole of eight weeks for repairing his house and taking care of his family members. No other argument or submission has been made by the counsel for the petitioner.

In response, counsel for the respondent-State vehemently opposed the prayer for parole inter-alia, stating that:

Parole/furlough is only a concession given by the State Government, and it cannot be claimed by the prisoner as a matter of right;

The Parole Act and Rules have been amended by the State Government from time to time whereby convicts sentenced under various sections have been categorised as per the nature of their crime. As per the Haryana Good Conduct Prisoners’ (Temporary Release) Amendment Act, 2013, the petitioner falls under the ‘Hardcore Prisoner’ category viz “*A prisoner who has been convicted of rape with a woman below sixteen years of age under Sections 363, 366 IPC, & 6 POCSO Act*”;

Further, as per Section 5 (A)(2) of the Amended Parole Act, 2015, it is provided that :—

“Notwithstanding anything contained in subsection (1), a *convicted hardcore prisoner* who has not been awarded death penalty, *may be entitled for temporary release parole or furlough only if he has completed his five years imprisonment* and has not been awarded any major jail punishment by the Superintendent of Jail, as judicially appraised by the concerned

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.” (Emphasis supplied)

It was pointed out that in the present case the petitioner had completed only 2 years, 9 months and 19 days of his sentence including under trial period till 11.7.2022. As such the petitioner was not entitled to be considered for parole as he had not yet completed five years imprisonment as required under the Amended Parole Act, 2015.

It was further stated by counsel for the State that it was on the aforesaid grounds that the application/ representation dated 7.4.2022 of the father of the petitioner seeking parole for the petitioner was rejected by Respondent no. 2 vide speaking order dated 9.4.2022 (appended at Annexure R-1).

On facts, counsel for the State brought our attention to letter no. 1227/MCG dated 11.7.2022 issued by the Office of Municipal Committee, Gharaunda (appended as Annexure R-2/T with the reply filed by respondent State). A perusal of this letter reveals that the address given by the petitioner as his residential address viz ‘House no. 286, New Ward no. 10, Gharonda’, in fact belongs to and has been registered in the name of one Shri Ram Narayan.

This letter further states that as per house tax record for the years 2010–15, property numbers 311/14 and 313/14 are shown to be registered in the name of the father of the petitioner namely Sh. Subhash Chand s/o Sh. Mohan Lal; and after inspection of both these properties it

has been found that *“House number 311/14 is in dilapidated condition and this house has roof of wooden pillar. Due to rainy season, it needs repairing. While house number 313/14 is in 'ok' condition and it has been made of concrete”*.

We have heard learned counsel for the parties at length and given our thoughtful consideration to the submissions made by them, and gone through the record with their able assistance.

A perusal of report dated 11.7.2022 (Annexure R-2), issued by the Office of Municipal Committee, Gharaunda, reveals that the residential address given by the petitioner is in fact, registered in the name of one Shri Ram Narayan. Out of the two houses registered in the name of the father of the petitioner, only one is in a dilapidated condition, while the other is made of concrete. As such, the ostensible reason cited by the petitioner for seeking Parole does not stand scrutiny. Clearly, the petitioner has mis-stated facts before this Court, and is therefore, not entitled to the concession of parole.

Furthermore, as noticed above, the petitioner falls within the category of ‘Hardcore prisoner’. ‘Hardcore prisoner’ is defined in Section 2 (aa) of the Haryana Good Conduct Prisoner (Temporary Release) Amendment Act, 2013, and is reproduced hereunder:-

“(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 read with 307 IPC;
- (5) rape with murder under section 376 read with 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 XII or XVII of IPC, except the offences covered under clause (i) above, committed on different occasions not constituting part of the

same transaction and as a result of such conviction has undergone imprisonment at least for a period of twelve months; ...”

A perusal of this provision shows that the petitioner clearly falls within the ambit of Section 2(aa)(i)(7) above, and is a ‘Hardcore prisoner’ as defined hereinabove, having been convicted of committing a most heinous crime against a girl child. Therefore too, the petitioner is not entitled to the relief of parole.

Even otherwise, as per the provisions of the Amended Parole Act, 2015, a convicted Hardcore prisoner may be considered for temporary parole only after he has completed 5 years’ imprisonment. Admittedly, in the present case, the petitioner has completed only 2 years, 9 months and 19 days of his sentence including undertrial period, till 11.7.2022. The petitioner can therefore, not be considered for parole.

It may be noticed that in almost identical circumstances in CRWP No. 604 of 2016, titled as ‘Sandeep vs State of Haryana and others’, a Co-ordinate Bench of this Court has declined relief of parole in the following terms:

“1. Petitioner seeks issuance of necessary directions to the respondents for his release on emergency parole in terms of Section 3(1)(d)(iv) of the Haryana Good Conduct Prisoners (Temporary release) Act, 1988 (hereinafter referred to as ‘the Act’) for a period of four weeks on the ground that marriage of his sister is going to be solemnized on 9.5.2016. Petitioner also seeks to challenge the order dated 18.4.2016 passed by respondent No. 3, thereby, declining his prayer for the

grant of parole.

2. *Petitioner was tried and convicted in case bearing FIR No. 146 dated 3.7.2013 under Sections 363, 366-A, 376 (D), 379 IPC and under Section 6 of the POCSO Act registered at Police Station Khol, District Rewari. He was sentenced to undergo rigorous imprisonment for a period of 20 years. Criminal Appeal bearing CRA-D-362-DB of 2015 is pending in this Court, where amount of fine was stayed.*
3. *Earlier prayer for Parole of the petitioner, on the ground of harvesting of crop, was declined by the competent authority, vide order dated 4.4.2016. Now petitioner seeks emergency parole on the ground that marriage of his sister is going to be solemnized on 9.5.2016. He is the only son of his parents. He has four sisters. Out of them two have already been married. Family members of the petitioner are dependent upon him. Representation, which was made through father of the petitioner for release on emergency parole was declined by respondent No. 3 vide order dated 18.4.2016 by endorsing that the petitioner falls under the category of hardcore criminal being convicted in terms of Section 376(D) IPC.*
4. *As per provisions of the Act, case of the petitioner falls under Section 2(aa)(1)(7) of the Act, therefore, parole cannot be granted in such a case unless and until the convict completes a period of five years of actual sentence. Petitioner has undergone only a period of 2 years, 8 months and 24 days as on 3.3.2016, therefore, by legal fiction the case was not considered by the competent authority. Since there is an express bar for the grant of parole in case the convict is sentenced to undergo for the offences as mentioned in Section 2(aa)*

(1)(7) of the Act as amended in 2013, therefore, parole cannot be considered prior to undergoing five years of actual sentence by the petitioner/ convict as he falls under the category of hardcore criminal. There cannot be any exception to the mandatory rule, dehoes the bonafide as projected by the petitioner in the context of marriage of his sister and he being the only son of his parents.

5. *The claim of the petitioner cannot be appreciated over and above the mandate of law, therefore, this petition is totally devoid of merits and the same is dismissed.”*

It is thus clear, that in almost identical circumstances, a Co-ordinate Bench of this Court has held that the petitioner therein was not entitled to the relief of parole being Hardcore prisoner, and not having completed 5 years sentence as required under the Amended Parole Act, 2015. The case of the petitioner is squarely covered by the above decision.

Even reliance placed by the petitioner on the decision of this Court in case CRWP No. 10862 of 2020 titled as “Kulwinder Singh alias Kinda versus State of Punjab and others” is misplaced as the conviction therein is under Section 22 of the NDPS Act, and not under Section 6 of the POCSO Act. Therefore, unlike the present case, the petitioner therein did not fall within the category of “Hardcore prisoner”.

Further, in the relied upon case, no reasons had been given by the respondent-Senior Superintendent of Police for rejecting the petitioner’s application for parole. Only a bald averment had been made that if the petitioner therein was released on parole he would pose a danger to the State security and situation of law and order of the locality without

assigning any reasons for opining as such. In contrast, in the present matter, sound reasons have been given by the respondent No. 2 in order No. 1986 dated 9.4.2022 (at Annexure R-1), while rejecting the application dated 7.4.2022 of the father of the petitioner seeking parole for the petitioner.

Therefore, the petitioner can derive no benefit from this judgement as the facts thereof are distinctly different from the facts of the present case.

Accordingly, in view of the above discussion, it is held that this petition is devoid of merit and is dismissed as such.

(RITU BAHRI)
JUDGE

August 29, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No