

222 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-2658-2023 (O&M)
Date of Decision: 01.06.2023

Gurpreet Singh alias GopiPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Jagjot Singh Lalli, Advocate for the petitioner.
Mr. Lovinder Sofat, DAG, Punjab with
Mr. Gurpreet Singh, DAG, Punjab.
Mr. Arun Pal Singh, ADGP, Prisons, Punjab in person.

B.S.Walia, J. (Oral)

1. Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ of Certiorari for quashing impugned order Annexure P/1 dated 14.09.2022, rejecting the application of the petitioner for grant of parole.

2. A perusal of order Annexure P/1 reveals that the petitioner was convicted in case FIR No.222 dated 08.10.2011, U/s 302/376 of IPC, P.S. Adampur, District Jalandhar and was sentenced as under:-.

Sr. No.	Section	Imprisonment
1.	376 of IPC	Imprisonment for ten years with fine of Rs.10,000/- and in default of payment of fine to undergo further imprisonment of four months.
2.	302 of IPC	Life imprisonment with fine of

		Rs.20,000/- and in default of payment of fine to further undergo imprisonment of six months.
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3. A perusal of Annexure P/1 further reveals that the claim of the petitioner for release on parole was rejected on account of the petitioner falling under the category of ‘Hardcore Prisoner’.

4. Learned counsel contends that the petitioner was convicted on 25.09.2013, whereas the incorporation of the definition of term ‘Hardcore Prisoner’ was made in the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, vide amendment dated 07.01.2016, therefore, the same is not applicable to the petitioner and could not be made the basis by the respondents to deprive the petitioner of grant of parole. Learned counsel relies upon the decisions of Hon’ble the Coordinate Bench dated 30.01.2020, in CRWP-2478-2019 in case titled as Rohit Kumar alias Babbu vs. State of Punjab and others, followed by another Hon’ble the Coordinate Bench in CRWP-2667-2020, in case titled as Sandeep Kumar alias Sandy vs. State of Punjab and others, decided on 18.01.2021 as also another Hon’ble the Coordinate Bench in CRWP-2634-2021, in case titled as Rakesh Kumar alias Goldy vs. State of Punjab and others, decided on 18.03.2021, as per which, in view of amendment of the Act on 07.01.2016, defining ‘Hardcore Prisoner’ the amendment would not apply retrospectively but prospectively and that the said amendment could not be made basis for rejecting the claim of the petitioner for grant of parole as the petitioner therein had been convicted prior to the amendment. Accordingly, the aforementioned petitions were allowed, impugned orders were set aside and the respondents

directed to consider the case of the petitioners therein for grant of parole after considering them as a prisoner and not a 'Hardcore Prisoner'.

5. Learned counsel contends that the decision in Sandeep Kumar alias Sandy was challenged by way of SLP (Criminal) No.1431/2021 and the operation of the judgment of Hon'ble the Division Bench of this Court was stayed by Hon'ble the Supreme Court vide order dated 19.02.2021. However, subsequently stay granted by Hon'ble the Supreme Court was vacated vide order dated 19.04.2022 while granting liberty to the parties to move an application before Hon'ble the Chief Justice, Punjab and Haryana High Court, for placing the matter before three Hon'ble Judges' Bench for resolving the conflicting views with regard to the interpretation of the term 'Hardcore Prisoner' as given in the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 as amended on 07.01.2016. Learned counsel contends that pursuant to vacation of stay against the order of Hon'ble the Division Bench of this Court in Sandeep Kumar alias Sandy's case (supra), the competent authority released the said petitioner i.e. Sandeep Kumar alias Sandy on parole for six weeks.

6. On 22.05.2023, the State had prayed for an adjournment for consideration of the claim of the petitioner for grant of relief as granted to petitioner in Rohit Kumar alias Babbu's case (supra) and Sandeep Kumar alias Sandy's case (supra). However, when the matter was taken up on adjourned date i.e. 31.05.2023, learned DAG, Punjab, opposed the release of the petitioner on parole despite identically situated convict namely Sandeep Kumar alias Sandy having been released on parole by the State itself pursuant to vacation of stay by Hon'ble the Supreme Court, vide order dated 19.04.2022.

7. On query, learned DAG, Punjab had also informed this Court that no steps had been taken by the State to move an application before Hon'ble the Chief Justice in terms of the liberty granted by Hon'ble the Supreme Court vide order dated 19.04.2022 subsequently corrected vide order of the same date, for constitution of a Bench of three Hon'ble Judges' for resolving the conflicting views with regard to the interpretation of the term 'Hardcore Prisoner' as given in the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

8. Taking into account the aforementioned position, we had sought the presence of the competent authority to explain the contradictory stands being adopted by the State qua similarly situated convicts despite vacation of stay by Hon'ble the Supreme Court in Sandeep Kumar alias Sandy's case (supra) as also there being three judgments of Coordinate Bench of this Court, granting relief of parole as prayed for in the instant petition.

9. Pursuant thereto, ADGP (Prisons), Punjab is present in Court today and informs that an application could not be moved before Hon'ble the Chief Justice for constitution of Bench of three Hon'ble Judges', in terms of the liberty granted by Hon'ble the Supreme Court till date but the same would be done at the earliest and in any case before the re-opening of the Court and in the meantime, the claim of the petitioner for release on parole would be considered in the light of the precedents cited by learned counsel for the petitioner and decision in respect thereto would be taken within one week from today. The same satisfies learned counsel for the petitioner.

10. Accordingly, in view of the position noted above as well as by taking into account the assurance held out by the ADGP (Prisons), Punjab,

competent authority directed to take a fresh decision on the plea of the petitioner in accordance with law in the light of the precedents cited by learned counsel for the petitioner, as expeditiously as possible and in any case within one week from today and communicate the decision to the petitioner.

11. Petition disposed of with the aforementioned directions.

(B.S.WALIA)
JUDGE

01.06.2023
rajesh

(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No