

2023:PHHC:115892-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRWP No.4549 of 2023
Date of Decision: 04.09.2023

Naresh Kumar @ Jhota

...Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.S. Dhull, Advocate for the petitioner.
Mr. Surender Singh Pannu, Additional AG, Haryana.

ANUPINDER SINGH GREWAL, J.(Oral)

The petitioner is seeking his release on emergency parole as his mother is stated to be suffering from various ailments.

Learned counsel for the petitioner submits that the case of the petitioner for parole has been erroneously rejected by treating him as a “Hardcore Prisoner”. Although, recovery of only a mobile phone had been effected from the petitioner. The case against the petitioner had been registered under Section 42-A of the Prisons Act, 1894 and the Jail Superintendent had also punished him under Section 46 of the Prisons Act for solitary confinement for a period of 30 days. He, therefore, submits that the Jail Authorities cannot simultaneously proceed under Section 42-A and Section 46-A of the Prisons Act which would amount to double jeopardy.

Learned State counsel while referring to the reply submits that the petitioner is a convict under Section 302 IPC and undergoing life imprisonment. While in jail, he was found in possession of mobile phone on two occasions and cases were registered against the petitioner. The petitioner was acquitted in case under Section 42-A of the Prisons Act and is on bail in the other case under Section 46 of the Prisons Act. The Jail Superintendent has punished the petitioner under Section 46-A of the Prisons Act which has been judicially appraised by the Sessions Judge, Faridabad. He furnished a copy of the order of judicial appraisal passed by the Sessions Judge, Faridabad, dated 21.01.2019 which is taken on record. He also submits that although the petitioner has undergone a sentence of over 05 years but he would not be eligible for parole till the expiry of 05 years from the date of recovery of mobile phone from the petitioner. The mobile phone was recovered from the petitioner on 13.01.2019. He also submits that mother of the petitioner had to be operated upon on 17.05.2023, therefore, at present there is no emergent requirement for the petitioner to be released on parole.

Heard.

The petitioner has been denied parole on the ground that he has been held to be a “Hardcore Convicted Prisoner” as mobile phone had been recovered from him. It is stipulated in Section 2 (1) (g) (iv) of The Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (in short 'the Act') that prisoner who is found in possession of mobile phone while in jail would be considered as an “Hardcore Convicted Prisoner”. It is also provided in Section 6 of the Act that the prisoner would not be entitled to be

released on parole for a period of 05 years from the date of his latest offence.

We do not find any merit in the contentions raised by learned counsel for the petitioner that the petitioner cannot be proceeded against both under Section 42-A and Section 46 of the Prisons Act. The Full Bench of this Court in **CRWP No.1890 of 2020** titled **Kulwant @ Monu Vs. State of Haryana and others, decided on 26.08.2022** along with other connected cases, while considering this issue had specifically held that these two Sections operate in their own fields and a prisoner could be proceeded against under both these sections which would not amount to double jeopardy under Article 20(2) of the Constitution of India. The relevant extract from the judgment is reproduced hereunder:-

“34. The law laid down by the Hon’ble Supreme Court in Ghaseeta Ram supra applies to those cases where the Jail Superintendent makes a reference under section 52 of the Prisons Act and simultaneously proceeds under section 46, which would be violative of Article 20(2) of the Constitution of India. However, a comprehensive reading of section 42-A of the Prisons Act points out that the possession or usage of the mobile phone/ SIM card etc., by an inmate in the prison is a cognizable offence, making it mandatory for the prison officials/Superintendent to lodge a report under section 154 CrPC. A simultaneous determination by the (Jail) Superintendent under section 46 would not amount to double jeopardy even if the Superintendent imposes punishment for such offence because the Jail officials and Superintendent have no discretion in the operation of 42-A. They become mere informants of the commission of a cognizable offence, and the trial is conducted under the Code of Criminal Procedure, 1973.

The Legislature has impliedly taken away the discretion of the Jail Superintendent to refer the matter under section 52 in cases of recovery of mobile phones/SIM card etc., making it practically redundant because 42-A is a cognizable offence, and also prescribes a minimum and a higher sentence of imprisonment than section 52 of the Prisons Act. However, the powers of the Superintendent to proceed under section 46 of the Prisons Act are independent and discretionary, intended to achieve a completely different objective. The natural corollary that follows is that simultaneously proceeding under 42-A and 52 amounts to double jeopardy, but simultaneous proceedings under 42-A and 46 does not amount to double jeopardy, and shall not be in violation of Article 20(2) of the Constitution of India.”

It is also manifest from reading of the judgment of the Full Bench that in the event the Jail Superintendent has awarded a prisoner punishment under Section 46(4) of the Prisons Act, the bar for parole for the specified period would come into operation. The relevant extract from the judgment is reproduced hereunder:-

“42. We are in disagreement with the reasoning because the bar for parole or furlough to a hardcore prisoner would start either on conviction under sections 42 or 42-A of the Prisons Act, 1894, by the concerned trial court or upon determination of such offence under Section 45(12) of the Prisons Act, 1894 and also when the Jail Superintendent has awarded such a prisoner a punishment under section 46(4), and further that such punishment has been judicially appraised by the concerned District and Sessions Judge as mandated in section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.”

Consequently, we do not find any merit in this petition at this stage. The petition is dismissed at this stage. However, the petitioner would be at liberty to apply for parole on completing 05 years from the date of recovery of mobile phone.

(ANUPINDER SINGH GREWAL)
JUDGE

04.09.2023
d.gulati

(LALIT BATRA)
JUDGE

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No