

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

CRWP-9208-2023

Reserved on: 31.10.2023

Pronounced on: 06.11.2023

KULDEEP @ BALKAR

. . . . Petitioner

Vs.

STATE OF HARYANA AND OTHERS

. . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Harsh Rana, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

Petitioner is aggrieved by the order dated 15.03.2023 (Annexure P1) passed by the Superintendent Jail, District Jail, Nuh, whereby application of the petitioner for his temporary release on parole has been rejected. By way of this petition, prayer is made for issuance of a writ in the nature of certiorari for quashing the aforesaid order dated 15.03.2023 and further to issue writ in the nature of mandamus directing the respondents to release the petitioner on parole for a period 10 weeks under Section 3(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 [for short 'the Act'].

2. Admittedly, petitioner is serving sentence of imprisonment for life in District Jail, Nuh, after his conviction recorded in case FIR No.115 dated 11.04.2010 registered at Police Station Ganaur Sonipat, under Sections 148/149/302/307/324/323/395/447 IPC and Section 25 of the Arms Act. Criminal Appeal bearing CRA-D-394-DB-2013 filed by the

petitioner, was dismissed by this Court vide judgment dated 11.01.2017. Petitioner applied for temporary release on parole and his request has been declined by way of the impugned order on the ground that he falls in the category of hardcore prisoner, in accordance with Section 2(1)(g)(vi) of the Act.

3. The contention of ld. counsel for the petitioner is that words used in Section 2(1)(g)(vi) of the Act are that 'whoever commits an offence'. Ld. counsel contends that petitioner has not been convicted so far in the two cases as referred by the Superintendent Jail in the impugned order and so, he deserves to be released on parole.

4. Opposing the petition, respondent/State in its reply filed by way of affidavit of Shri Resham Singh, Deputy Superintendent Jail, District Jail, Nuh, on behalf of respondents No.1 to 4, has given details of the pending cases against the petitioner, committed during parole, which are as under: -

- (i) *Case FIR No. 213 dated 17.07.2020 u/s 341, 364A, 34 & 25/54/59 of the A. Act at PS Rai, Sonipat (**Committed during special parole period**) - (Facing trial before the Ld. Court of Sh. Parmod Goyal, Sessions Judge, Sonipat. He is on bail in this case.*
- (ii) *Case FIR No. 304/2020 u/s 25/54/59 of A. Act PS Ganaur, Sonipat (**Committed during special parole period**) - (Facing trial before the Ld. Court of Ms. Sonia Sheokand, Sub Divisional Magistrate, Ganaur, Sonipat. He is on bail in this case.*
- (iii) *Case FIR No. 373 dated 10.08.2021 u/s 392.120B, 482 IPC PS Dankaur, Gautam Budh Nagar (**Committed during parole period**) - (Facing trial before the Ld. Court of ACJM, Sessions Judge. Gautam Budh Nagar. He is on bail in this case.*

Respondent/State has further given details of the cases already decided against the petitioner, which are as under: -

- (i) *Case FIR No, 404 dated 25.10.2013. U/s 420,506,120B IPC & 42 Prisons Act P.S. City Sonipat- (Acquitted by the Ld. Court of Sh Surender Kumar, CJM Sonipat, on 05.10.2015).*
- (ii) *Case FIR No. 277/2008, U/s 323,427,506 IPC P.S. Matlauda, Panipat- (Acquitted by the Ld. Court of Dr. Sunita Grover, ACJM Panipat, on 17.07.2012).*
- (iii) *Case FIR No. 107/2007, U/s 323,324,506 IPC P.S. Ganaur, Sonipat- (Acquitted by the Ld. Court of Sh Amit Garg, SDJM, Ganaur, Sonipat, on 08.12.2012).*
- (iv) *Case FIR No. 197/2009, U/s 323, 325, 34 IPC P.S. Ganaur, Sonipat-(Acquitted by the Ld. Court of Sh Vikrant, JMIC, Ganaur, Sonipat, on 12.11.2013).*
- (v) *Case FIR No. 253/2012, U/s 42 Prisons Act P.S. City Sonipat- (Acquitted by the Ld. Court of Sh Ashutosh, JMIC Sonipat, on 8.09.2014).*
- (vi) *Case FIR No. 34 dated 11.04.2010, U/s 147,148,323,452,506 IPC Matlauda, Panipat - (Acquitted by the Ld. Court of Sh Madhur Bajaj, JMIC Panipat, on 07.08.2014).*

5. (i) Ld. State counsel submits that apart from above, petitioner committed jail offences, which have been judicially appraised, for recovery of a mobile phone from him during search on 07.10.2013 and for which he was awarded punishment of separate confinement in security cell for a period of 30 days. The two cases bearing FIR No.213 dated 17.07.2020 registered at Police Station PS Rai, Sonipat under Sections 341, 364A, 34 IPC and 25/54/59 of the Arms Act; and FIR No.373 dated 10.08.2021 registered at Police Station Dankaur, Gautam Budh Nagar, under Sections 392, 120B and 482 IPC were registered against the petitioner for committing the offences, when he was released on parole.

(ii) Ld. State counsel has further referred to the definition of 'hardcore prisoner' as provided under Section 2(1)(g) of the Act and submits that petitioner falls in the said category. Ld. State counsel has

further referred to the judgment of this Court passed in CWP No.10236 of 2018, titled as ***Virender @ Dhillu Versus State of Haryana and others***, decided on 26.04.2018 so as to contend that petitioner cannot claim release on parole as a matter of right, and having regard to the facts and circumstances of the case and the criminal history of the petitioner, parole has been rightly declined by passing the speaking impugned order.

6. I have considered submissions of both the sides and have appraised the record.

7. As per Section 2(1)(i) of the Act, ‘parole’ means temporary release of a convicted prisoner from custody and is categorised as under: -

“2(1)(i) “parole” means temporary release of a convicted prisoner from custody and is categorized as under: -

(i) ‘custody parole’ means escorting of a convicted prisoner under armed police custody to the place of visit (within the territory of Republic of India) and return therefrom for a specific period and for specific reasons as provided under this Act;

(ii) ‘emergency parole’ means parole granted to a convicted prisoner by the Superintendent Jail when a member of the convicted prisoner’s family has died or is in serious condition or the convicted prisoner himself is in serious condition under section 5;

(iii) ‘regular parole’ means parole granted to a convicted prisoner by the competent authority under section 3;

8. A prisoner cannot claim release on parole as a matter of right. It is just a privilege provided by the State. In this regard, observations made by this Court in CWP-10236-2018 titled as ***Virender @ Dhillu vs. State of Haryana*** decided on 26.04.2018, are relevant, which read as under: -

“The remission and parole are not the vested rights of the prisoners. In fact, these are privileges granted by the State to the convicted prisoners.

Therefore, a convict prisoner cannot claim these two privileges as his vested rights. There is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by the Statute. On the other hand, a privilege is granted by the State under certain conditions and can equally be taken away by the State. The privilege can be given on certain specific grounds. Parole is a part of reformatory theory of punishment. It is not necessary that all the convicts must have the privilege extended to them. These benefits can be refused in case refusal is based on intelligent differentia and has a nexus to the object of the Rules. A refusal cannot be violative of Article 14 of the Constitution of India. A prisoner may be released temporarily by an officer appointed in this behalf by the state government in case it is desirable for a sufficient cause.”

9. In the present case, petitioner is praying for grant of regular parole, which is to be considered by the competent authority under Section 3 of the Act, subject to such conditions and procedure as specified under Sections 11 and 12 of the Act.

10. Section 3 of the Act deals with temporary release of convicted prisoner on regular parole on certain conditions. Section 4 of the Act deals with temporary release of convicted prisoner on furlough on certain conditions. Section 5 deals with temporary release of a convicted prisoner on emergency parole on certain conditions.

11. Section 6 of the Act deals with temporary release of a convicted prisoner on custody parole. It also contains special provisions for hardcore convicted prisoners. It reads as under: -

“(1) The competent authority shall grant custody parole to a convicted prisoner subject to such conditions and procedure as specified under sections 11 and 12.

(2) Notwithstanding anything contained in sections 3, 4 and 5, no hardcore convicted prisoner shall be entitled to be released on emergency parole or regular parole or furlough:

Provided that a hardcore convicted prisoner may be granted custody parole for attending funeral of his family members or marriage of his children or siblings.

*(3) Notwithstanding anything contained in sub-section (1), a **hardcore convicted prisoner**, who has not been awarded death penalty or life imprisonment till natural life and **has completed five years of his sentence (including maximum two years under trial period)**, without committing any major jail offence or any cognizable offence during the last five years, shall be entitled for emergency parole or **regular parole** or furlough at par with convicted prisoners. **Such period of five years shall be counted from the date of his latest offence or act which falls under the category of hardcore convicted prisoner:***

Provided that a hardcore convicted prisoner who has been sentenced for imprisonment till natural life shall be eligible for emergency parole or regular parole at par with convicted prisoners only after completion of seven years of imprisonment after conviction:

Provided further that if the hardcore convicted prisoner so released temporarily violates any condition of parole or furlough or commits any cognizable offence, he shall be debarred from such release for next three years.

(4) Convicted prisoner including hardcore convicted prisoner may be granted custody parole without taking into account his period of completion of sentence for attending funeral of his family member or marriage of his children or siblings.

(5) The competent authority shall verify the facts for granting custody parole through in-charge of the police station where the prisoner wants to avail the custody parole or through a jail officer not below the rank of Assistant Superintendent Jail.

(6) Custody parole shall not be granted for more than six hours for one event excluding the journey time and the police escort guard for the custody parole shall be provided by the Superintendent of Police or the Deputy Commissioner of Police of the district within whose jurisdiction the

jail is situated. The period of custody parole shall be treated as period spent in jail.”

12. The aforesaid provision clearly lays down that no hardcore convicted prisoner shall be entitled to be released on emergency parole or regular parole, although custody parole may be allowed in certain circumstances. Sub Section (3) of Section 6 of the Act further makes it clear that a hardcore convicted prisoner, not awarded death penalty or life imprisonment till natural life, and who has completed five years of his sentence, without committing any major jail offence or any cognizable offence during the last five years, shall be entitled for emergency parole or regular parole or furlough at par with convicted prisoners and that period of five years shall be counted from the date of his latest offence or act, which falls under the category of hardcore convicted prisoner.

13. Section 2(1)(g) of the Act provides various situations, when a prisoner will fall under the category of ‘hardcore convicted prisoner’.

Relevant part of the said section reads as under: -

“2 (1) (g) “hardcore convicted prisoner means any prisoner –

(i) to (v) xxxxxxxxxx [not relevant]

(vi) who commits a cognizable offence punishable with imprisonment for a period of seven years or above during confinement in the jail or during his temporary release under this Act; or”

14. In the present case, as per the reply filed by the respondent-State, when the petitioner was on special parole, he committed offence, for which he was booked in case FIR No.213 dated 17.07.2020 under Sections 341, 364A, 34 IPC & 25/54/59 of the Arms Act registered at PS Rai, Sonipat, in which he is presently facing trial in the Court of Id. Sessions Judge, Sonipat. Not only this, during parole period, petitioner also

committed offence, for which he was booked in case FIR No.304 of 2020 under Sections 25/54/59 of the Arms Act, registered at Police Station Ganaur, Sonipat, in which he is facing trial in the Court of Id. Sub Divisional Judicial Magistrate, Ganaur, Sonipat. Petitioner committed yet another offence under Sections 392, 120B and 482 IPC (*i.e., a cognizable offence, punishable up to 10 years imprisonment*) during the parole period for which he was booked in case FIR No.373 dated 10.08.2021 registered at Police Station Dankaur, Gautam Budh Nagar, in which he is facing trial in the court of Id. ACJM, Gautam Budh Nagar.

15. Thus, the last offence committed during the parole period is on 10.08.2021 and so, as per Section 6 (3) of the Act, the application for regular parole of the petitioner can be considered after the period of five years is over from the date of the said latest offence, which falls the in the category of ‘hardcore convicted person’.

16. The contention of Id. Counsel is that petitioner is only accused of committing the offences during the parole period and that he has not been convicted in those cases and therefore, he does not fall in the category of ‘hardcore convicted prisoner’.

17. I am afraid that the above contention is devoid of any merits. The words used in Section 2(1)(g)(vi) of the Act are that ‘*who commits a cognizable offence*’; and not ‘*who is convicted of committing a cognizable offence*’. It is important to notice that in Section 2(1)(g)(viii) of the Act, words used are ‘*who has been detained or convicted under National Security Act, 1980, Terrorist and Disruptive Activities (prevention) Act, 1987, the Official Secrets Act, 1923, the Foreigners Act, 1946 or any Act (Central or State) for control of organised crime.*

18. Thus, for a prisoner who fall in the category of ‘hardcore criminal’ prescribed under Section 2(1)(g)(viii) of the Act, a prisoner should have been detained or convicted under any of the Acts mentioned therein, but for a prisoner, who fall in the category of ‘hardcore criminal’ under Section 2(1)(g)(vi) of the Act, it is sufficient that he is alleged to have committed a cognizable offence punishable with imprisonment for a period of 7 years or above, during his conviction in jail or during his temporary release under the Act. The very object of declining the parole for a certain period to a hardcore criminal shall be defeated, if the interpretation as suggested by Id. counsel for the petitioner, is accepted. If that interpretation is accepted, it would mean that a prisoner released on temporary parole, may commit any offence of whatever nature and will not fall in the category of hardcore criminal, till his conviction is recorded for that offence committed during parole period. This could not be the legislative intent.

19. On account of the entire discussion as above, it is held that no fault can be found with the impugned order (Annexure P1) passed by the Superintendent Jail, Nuh. It is further held that having regard to the criminal antecedents of the petitioner as per the details given in the reply filed by the State, which has also been reproduced above, this Court is not inclined to issue any writ for releasing the petitioner on parole.

Consequently, the present petition is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

06.11.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes/No