

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

280

CRWP No.10846 of 2023
Date of Decision: 23.11.2023

Pawan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Anjali Sheoran, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Sections 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus thereby directing the respondents to grant to the petitioner temporary release/parole under Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (**For short “Act, 2022”**).

2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner along with the co-accused had been booked for commission of offences punishable under Sections 302, 376-D, 366, and 201 read with Section 120-B of IPC. He had been arrested and

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challaned. After facing trial, he was held guilty for commission of aforementioned offences and vide judgment of conviction dated 18.12.2015 and order on quantum of sentence dated 21.12.2015, he along with some other convicts was awarded sentence of death for commission of offence punishable under Section 302 read with Section 120-B of IPC. It was further ordered that he be hanged by neck till he is dead.

3. Aggrieved by the order passed by learned trial Court, the petitioner along with other convicts had filed appeal before this Court and vide common judgment dated 19.03.2019 passed by this Court in criminal appeal filed by the petitioner as well as other convicts, the findings as given by learned trial Court were affirmed and upheld. Thereafter, the petitioner filed a Special Leave to Appeal before the Hon'ble Supreme Court and vide order dated 04.07.2019 passed in SLP (Criminal) No(s).5060-5066/2019, the execution of death sentence of the petitioner and other convicts was ordered to be stayed. The petition before the Hon'ble Supreme Court is pending.

4. It is submitted by the petitioner that he through his father has moved an application with the jail authorities for grant of regular parole to him as the marriage of his niece is fixed for 27.11.2023. The said application which was moved on 16.10.2023 is pending and has not been decided. It is also submitted that he has completed sentence of more than seven years and under the provisions of Act, 2022, he is eligible for regular parole/temporarily release on parole. His behaviour has remained good throughout the period of his imprisonment and no rule and regulation has been violated by him. It is submitted that by not deciding his representation and by denying him the grant of parole/temporarily release, the jail

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authorities are acting in an illegal manner and, therefore, the prayer in the instant petition has been made for giving direction to them to grant temporarily release for a period of at least two weeks for the purpose of attending the marriage of his niece.

5. Notice of the petition was given to the respondents who have filed a status report by way of affidavit of the respondent No.6. It is submitted that on making inquiry, it has been confirmed that the marriage of niece of the petitioner is to take place on 27.11.2023. Learned State counsel has also placed on record a copy of letter bearing endorsement No.8575 dated 15.11.2023 and addressed to Advocate General, Haryana submitting that the execution of death sentence of the petitioner has been stayed by the Hon'ble Supreme Court vide order dated 04.07.2019. It is further submitted that the petitioner falls under the category of hardcore prisoner and is not entitled to parole as per Section 6 (3) (1) of the Act, 2022.

6. Learned counsel for the petitioner has submitted that he has undergone seven years of regular imprisonment in the jail premises. Though he has been sentenced to death penalty but the execution of the said death penalty has been ordered to be stayed by Apex Court and it is argued by her that in these circumstances, the proviso to Section 6 (3) of the Act, 2022 is attracted and in view thereof, the petitioner is entitled to be extended benefit of parole.

7. On the other hand, learned State counsel has submitted that because of order of stay in execution of death sentence, the proviso to Sub Section 3 of Section 6 of the Act, 2022, is not at all attracted as the petitioner still remains a hardcore convicted person who has been awarded death

penalty and, therefore, it is urged by him that the petition does not deserve to be allowed.

8. Admittedly, the petitioner has remained in actual custody for a period of over seven years as per the custody certificate. He had been awarded death sentence by the trial Court which has been affirmed by this Court. The sentence of death has been stayed by the Hon'ble Supreme Court. The petitioner falls within the definition of hardcore convicted prisoner as given in Section 2 (g) (5) of the Act, 2022 which includes a person convicted for commission of offence of penetrative sexual assault, aggravated penetrative sexual assault or unnatural offence with murder. As per 6 of the Act, 2022, a hardcore convicted prisoner, who has not been awarded death penalty or life imprisonment till natural life has to complete five years of sentence for seeking parole. As per the proviso to sub-Section 3 of this Section, a hardcore convicted prisoner 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. As already mentioned, the petitioner has been awarded sentence of death penalty. His sentence of death has been suspended by the Hon'ble Supreme Court during the pendency of appeal pending before it. However, in the considered opinion of this Court, that does not change the nature of the sentence so awarded to the petitioner for the purpose of grant of parole until and unless there has been any order regarding setting aside of his death penalty. As such, the proviso to Sub-Section 3 of Section 6 of the Act, 2022 cannot be stated to be attracted in this case. Therefore, the petitioner cannot be held entitled for grant of parole

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irrespective of the fact that he has completed seven years of imprisonment after conviction. Accordingly, the petition is dismissed.

23.11.2023
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(MANISHA BATRA)
JUDGE

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