



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

217

CRWP-798-2024 (O&M)
Date of decision: 20.05.2024

Surender alias Madha ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashish Kumar, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, filed under Articles 226/227 of the Constitution of India read with Section 482 of Cr.P.C., for issuance of a writ in the nature of Mandamus directing the respondents to grant parole for 08 weeks to the petitioner for agriculture purpose under the provisions of the Haryana Good Conduct Prisoner (Temporary Release) Act, 1998 and also to take care of his two minor sons and wife.
2. The petitioner, who is undergoing imprisonment for a period of ten years in case FIR No. 333 dated 25.06.2019, registered under Sections 452, 376, 506 of IPC and Section 3(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Meham, District Rohtak has been convicted and sentenced by learned Additional Sessions Judge, Rohtak, vide judgment/order dated 05.11.2022 for

Neutral Citation No. 2024:PHHC:070229

the offences under Sections 376, 452, 506 of IPC; Section 4 of the POCSO Act and Section 3(1)(w)(i) of the SC/ST Act. The petitioner is seeking grant of parole for 08 weeks for farming purposes. It is his case that he has two minor sons and wife, who have no source of income and are fully dependent upon agriculture and since his parents have already died, there is nobody in the family to look after the farming. It is further submitted that he is having four acres of land in joint possession, on which, they do farming. He has earlier also been granted benefit of parole on two occasions for one week each and after availing the same, he had surrendered before the jail authorities and had never misused the same. The petitioner has applied for grant of parole on 20.12.2023 but no action has been taken by the respondents on his application. Therefore, it is urged that the present petition may be allowed and he may be granted parole for the said period.

3. Upon notice, reply by way of affidavit of Superintendent, District Jail, Rohtak, has been filed on 13.03.2024, as per which, since the petitioner has been convicted for commission of offence of rape upon a child below the age of 16 years, he falls under the category of hardcore prisoners, as per Section 2(1)(g) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 2022 and as per the provisions of Section 6(3)(1) of this Act, it is mandatory for him to complete the period of 05 years of his sentence (including maximum two years under trial period) for being granted parole and since the petitioner has undergone only the actual sentence of about 02 years and 06 months, he is not entitled to get parole.

4. I have heard learned counsel for the parties at considerable and have also gone through the record carefully.

Neutral Citation No. 2024:PHHC:070229

5. Vide order dated 25.04.2024, learned counsel for the petitioner had sought time to place on record some documents/orders to show that the victim was above the age of 16 years at the time of occurrence. He has placed on record a copy of the judgment of conviction dated 05.11.2022, wherein, in paragraph No. 15, PW-11 Narender Kumar, Clerk, Haryana Education Board has proved the date of birth of the victim as '08.01.2003' and the date of birth of the alleged incident was 25.06.2019. Meaning thereby that on the date of occurrence, the victim was above the age of 16 years. Learned State counsel has filed a fresh reply today in Court, wherein also, it is admitted that as per her mark-sheet, the age of the victim on the date of occurrence was above 16 years and 05 months, which means that he does not fall within the ambit of Section 6(3)(1) of the said Act and is not a hardcore prisoner, hence, he can be granted parole, even before completing five years of sentence.

6. Admittedly, the petitioner is a share-holder in large chunk of agriculture land. The petitioner is inside the jail for about two and a half year and during the said period he has not committed any jail offence. He had been granted parole on previous two occasions and he had not misused the same and had surrendered in time before the jail authorities. Though, a perusal of the petition shows that the petitioner was seeking parole for the cultivation of wheat crop, which is done in winters, however, during the pendency of this petition, that season has gone by and now the season for cultivation of Kharif crops is approaching. The parents of the petitioner are stated to have died. He has two sons and wife in his family, who obviously are not capable of doing farming. In my opinion, for cultivating and harvesting the crop, the presence of the petitioner is necessary.

7. The release of a convict on parole is a wing of reformative process. The Act has been enacted as a reformative measure with an object to enable the prisoner to have family association or to perform certain family obligations and rituals. Until and unless sufficient material is available with the authorities giving solid reasons for declining the temporary release of a convict on parole, this benefit should not be declined.
8. Hence, the present petition is allowed. The respondents-authorities are directed to decide the application of the petitioner for grant of parole in the light of this order within a period of 30 days from today. The failure of the respondents-authorities in deciding the application of the petitioner within the time stipulated by this Court will result into automatic release of the petitioner on parole from 22.06.2024 to 05.08.2024, subject to the satisfaction of the jail authorities.

20.05.2024

(MANISHA BATRA)

Waseem Ansari

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes