117 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

CRWP-1175-2024
Date of Decision : 08.02.2024

LEKHRAJ @ LALMANI @ LALU .....Petitioner

Versus

STATE OF HARYANA .....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

****

SURESHWAR THAKUR, J. (Oral)

1. The present petitioner is undergoing detention in District Jail, Faridabad, in pursuance to a verdict of conviction and consequent thereto substantive sentence of imprisonment becoming imposed upon him, by the learned Additional Sessions Judge, Palwal, in case arising from FIR No. 669 of 2017 dated 27.08.2017 registered at Police Station Sadar Palwal, District Palwal, embodying thereins offences under Sections 148/149/302 IPC and Section 25/54/59 of the Arms Act, 1959.

2. During the period of his undergoing the substantive sentence of imprisonment, he preferred an application before the Competent Authority concerned, claiming relief qua his becoming released on parole. The ground as set forth in the said application, is that, he is required to be making the repairs of his house and that he is required to be also meeting his family members. Therefore, he claimed that for the afore purpose, he be released on parole for a period lasting

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

for about 70 days. On the said application, a declining order (Annexure P-5) became rendered.

3. The reason as became set forth in the declining order (Annexure P-5) was banked, upon, the provisions occurring in Section 6(3) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (hereinafter for short called as the 'Act of 2022'), provisions whereof become extracted hereinafter.

> ***"Section 6(3)*** *- Notwithstanding anything contained in sub-section (l), 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 on 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 five years."*

4. The afore stated reason banked upon the provision (supra), makes echoings that since the prisoner had committed a jail offence, inasmuch as, his being found to be in illegal possession of a mobile phone, thus during the phase of his suffering incarceration in the prison

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

concerned. Therefore, when he became sentenced to a fine of Rs.1000/- by the learned JMIC, Faridabad on 01.02.2021. In sequel, in terms of Section 2 (iv) of the 'Act of 2022' he was termed to be falling in the category of hard core prisoners.

5. Consequently, in terms of the provisions contained in Sub Section (3) of Section (6) of the 'Act of 2022', whereins, vis-a-vis a hard core 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), but yet when he has also not committed any major jail offence or any cognizable offence, during the last five years, thus the provision (supra), bestowing a privilege upon the prisoner concerned, to seek emergency parole or regular parole or furlough at par with the convicted prisoners.

6. Though the present petitioner became sentenced to undergo life imprisonment by the learned Additional Sessions Judge, Palwal, through a sentencing order drawn on 16.08.2022, and, though his entitlement for his becoming released on parole, from the prison concerned, became spurred from his completing five years of the afore substantive sentence of imprisonment, thus to be computed from date of his custody as undertrial i.e. from 05.09.2017. Resultantly, thereby, the present petitioner became entitled to be released on parole from the prison concerned.

7. Be that as it may, the ground for declining parole to the present petitioner becomes rested on the premise, that he had committed the jail offence (supra). Since the said jail offence,

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

categorized him to be a hard core criminal. Moreover, when the said jail offence, became committed on 28.12.2018, thus resulting in the sentence of fine becoming imposed upon him on 01.02.2021.

8. Therefore, when in terms of the proviso (supra), thus in the above ill event, he was required to be, irrespective of his earlier spending custody, as an undertrial from 05.09.2017 (in FIR No. 669 of 2017 dated 27.08.2017 registered at Police Station Sadar Palwal, District Palwal), rather to be spending a further period of five years in prison, period whereof, to be computed from his becoming sentenced to fine, on 01.02.2021 [in the jail offence (supra)], whereas, the said period rather not becoming completed till now since 01.02.2021.

9. In sequel, a declining order (Annexure P-5), was made on the present prisoner's application.

10. As stated (supra), the present prisoner, for the reason (supra), became entitled to become released on parole, from the prison concerned, as he had completed five years of the substantive sentence of life imprisonment as became imposed, upon him, on 16.08.2022 inasmuch as, the said five years terminated, since the date of his custody as undertrial i.e. from 05.09.2017, rather on 05.09.2022.

11. However, for the reasons (supra), yet this Court is to test the legal justifiability of the further reason (supra), as is made in the impugned order (Annexure P-5) whereby a declining order was made by the Competent Authority.

12. It appears that the Competent Authority concerned, has taken to compute the relevant period of five years, for not bestowing the relevant privilege to the present petitioner, inasmuch as, from

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

01.02.2021, whereons, the said sentence of fine became imposed by the learned JMIC, Faridabad, in respect of a charge drawn against the applicant-petitioner for his committing the jail offence (supra). However, the computation (supra) of the period of five years, rather within the ambit of the above extracted provision, becomes arrived at, on a gross mis-reading and mis-appraisal of the said coinage existing in the provision (supra).

13. The reason for making the above conclusion, becomes sparked from the factum, that the legislature in the provision (supra), has made thereins, the coinage as *"without committing any major jail offence or any cognizable offence during the last five years"*. Therefore, the makings of the above coinage in the provision (supra) is with a mindful purpose, inasmuch as, the legislature in its wisdom has deemed it fit and appropriate, that the relevant period of five years, whereby, the entitlement for the relevant purpose becomes bestowed upon the prisoner, is to be reckoned from the date of commission of offence, and, not from the date of imposition of sentence upon him, as becomes untenably done by the Authority who drew the impugned order (Annexure P-5).

14. In consequence, since the date when the major jail offence became committed by the present petitioner was on 28.12.2018. Therefore, the meaning to be imparted to the coinage *'during the last five years'* as occurs at the end of the above extracted statutory coinage, is that, the computation of the said period, is required to be made from the date of commission of major jail offence, but obviously is not required to be made, from the date of imposition of sentence of fine,

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

upon the convict, on 01.02.2021, by the learned Magistrate, as has been untenably done.

15. Though, for the above reasons, this Court disagrees with the reasons (supra) as occur in the impugned declining order. However, the reason for this Court to yet not bestow the privilege (supra) to the applicant-petitioner, arises from the factum that the prisoner, has neither put forth any tangible evidence, suggestive that as a matter of fact, he is required to be repairing his house and/or there is some exigency which is besetting his family members, thus requiring him to meet them.

16. Therefore, it appears that the said raised ground in the parole application, is flimsy raised, irrespective of the factum that the statute does not enumerate thereins, the mentioning of ground(s) in the relevant parole application, for therebys an affirmative order being made on the relevant application.

17. Even, if in the present statute, there is no requirement of any statutory ground, thus to be made on the application seeking parole, but yet there has to be a genuine and un-pretextual ground, in the parole application, and, when for reason (supra), the ground as raised in the present parole application, *prima facie*, appears to be pretextually raised.

18. Therefore, but for the above reasons, this Court deems it fit and appropriate to decline the instant parole application. The writ petition is accordingly dismissed.

19. However, the above declinings may not forbid the present petitioner, to, at a subsequent stage, prefer an application embodying

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document

thereins truthful and genuine reasons for his becoming entitled to parole.

20. On such an application being filed before the Superintendent of the prison concerned, the latter shall forthwith forward the same to competent authority, who shall make a valid speaking decision thereons, but the said reasons may not be the very same reasons, as set forth in the impugned declining order, especially when this Court has completely dis-agreed with the said declining reasons, as put forth in the impugned order (Annexure P-5).

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

08.02.2024
jyoti3

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

Jyoti
2024.02.09 10:48
I attest to the accuracy and
integrity of this document