

In the High Court of Punjab and Haryana at Chandigarh

CRWP-1517-2024

Reserved on: 04.03.2024

Date of Decision: 12.03.2024

SUMIT KUMAR

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. D.S. Virk, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The present petitioner seeks the quashing of Annexure P-1, wherebys the Superintendent of the Jail concerned, instead of forwarding the parole application of the present petitioner to the competent authority rather has taken to make a declining order thereons.

2. Therefore, the learned counsel for the petitioner submits, that the declining order as becomes passed by the Superintendent of the Jail concerned, rather is without jurisdictional competence and is required to be quashed, and, set aside. Consequently, a mandamus be made upon the Superintendent of the Jail concerned, to forward the parole application of the petitioner to the competent authority.

3. The submission (supra), as becomes addressed before this Court by the learned counsel for the petitioner becomes unhinged of its force, rather through the learned State counsel stating, at the bar, on instructions imparted to him by the official concerned, that through an apposite

notification thus the Superintendent of the Jail concerned, becomes empowered to, in respect of a hardcore convict prisoner, in category whereof, the petitioner is stated to fall, hence make an adjudication thereons, and, therebys is not bound to forward the petitioner's parole application to the competent authority.

4. The learned counsel for the petitioner does not contest the above factum. However, he submits, that yet the impugned order (Annexure P-1) requires an interference, as it has made a misplaced reliance upon clause 3 of Section 6 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022, (hereinafter referred to as "the Act of 2022") provisions whereof becomes extracted hereinafter.

"(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:"

5. On the other hand, the learned State counsel submits, that since in terms of Section 2(1)(g)(vi) of the Act of 2022, the petitioner is a hardcore convict. Therefore he submits therebys besides with the workability of the above *non obstante* clause No.3 (supra), as occurs in Section 6 of the Act of 2022, rather against the petitioner, resultantly Annexure P-1, is a validly made order, and, does not require any interference.

6. The learned State counsel submits, that since a verdict in respect of charges drawn under Sections 363, 366-A, and, 376-D became

pronounced, on 4.6.2018 by the learned Convicting Court, and, through a sentencing order of even date, the sentence of life imprisonment became imposed, upon the petitioner. Therefore, he submits that though the application for parole became filed, upon, 5 years lapsing since the date of making of the said verdict of conviction (supra), and, the consequent thereto imposition of sentence of life imprisonment rather vis-a-vis the present petitioner. However, he submits that since the present petitioner, on 07.09.2020, committed a jail offence, resulting in FIR No.352 becoming lodged against him on 7.9.2020, whereunders became embodied offence(s) constituted under Sections 323, 324, 326, 341 IPC, and, resulted in his through a verdict becoming made on 7.1.2023, thus becoming convicted and consequently sentenced to 3 years of imprisonment. Resultantly rather from 7.1.2023 the period of 5 years is to commence and, was required to elapse therefrom, thus for therebys the present petitioner becoming entitled to be released on parole.

7. In other words, he submits that since on 7.1.2023, the verdict of conviction became imposed, upon the present petitioner in respect of FIR No.352, thereupons the date (supra), becomes the relevant date for computing the relevant period of 5 years. However, the above made submission before this Court by the learned State counsel is devoid of any merit, and, is rejected as such.

8. The reason for making the above inference ensues from a close analyses being made of the above extracted provisions, as embodied in Section 2(1)(g)(vi) of the Act of 2022, wherein, the coinage “who commits” occurs, and thereby the date of commission of the jail offence, thus becomes the able date for making the apposite computation. Apparently the said

Release) Act, 1988 (hereinafter referred to as “the Act of 1988”), but has become embodied in Haryana Act No.15 of 2022. The further effect of the above, is that, the said provision which has been added in the Act of 2022 but was not in existence in the prior Act of 1988. Moreover, the said provision has only prospective effect, and, does not have any retrospective effect, thus to cover a jail offence which occurred/during the currency of the Act of 1988. Conspicuously, when both provisions (supra), became embodied in the Act of 2022, therefore, when no specific retrospectivity is assigned to the said added provisions, as such, the said provisions are reiteratedly deemed to be acquiring only prospective force. Furthermore, with the statutory coinage “commits” as occurs in Section 2(1)(g)(vi) of the Act of 2022, becomes imparted the signification, that rather than the date of conviction, thus the date of commission of the jail offence/is the relevant date. Therefore, since under the Act of 2022, the present petitioner did not commit the jail offence, rather jail offence, if any, which became committed by the present petitioner was committed when the Act of 1988 was in force, and, when therein the provisions (supra) were not carried.

9. In consequence, if the present applicant became convicted, and, sentenced in respect of the commission of the apposite jail offence, but post the relevant provisions rather acquiring force, on theirs becoming included in the Act of 2022, whereas, at the time of commission of the jail offence the prisoner was not beset with the relevant disability. Resultantly, when the convict-petitioner has already spent 5 years in prison in pursuance to a verdict of conviction, and, consequent thereto sentence of imprisonment dated 4.6.2018, as became awarded to him by the learned trial Court concerned. Therefore, the petitioner was entitled to be released on parole,

Act of 2022, being denied the facility of parole.

10. An aggravated momentum to the above inference becomes mobilized from a close analysis being made of Section 14 of the Act of 2022, provisions whereof becomes extracted hereinafter, and, whereby the repealing of the Act of 1988, has been saved to the extent that any right, privilege, obligation or liability acquired or incurred under the Act of 1988, besides any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act of 1988, thus become saved.

“14. The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (28 of 1988)’ is hereby repealed:

Provided that such repeal shall not affect-

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder: or

(b) any right, privilege, obligation or liability acquired or incurred under the Act so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed”

11. Consequently, since in the Act of 1988, there were no provision alike to the one, as becomes engrafted in the Act of 2022, inasmuch as, in the latter statute, thus Section 2(1)(g)(vi) of the Act of 2022 becoming added. Resultantly when the engrafted provision, (supra), but holds only prospective effect, besides when for non occurrence thereof, in the earlier Act of 1988, thereby when thereunders, the present petitioner had a right to seek parole, as he had spent 5 years in prison in respect of his becoming

awarded a verdict of conviction and order of sentence on 4.6.2018, *qua* a charge drawn under Sections 363, 366-A, and, 376-D of the IPC.

12. In aftermath, this Court finds merit in the instant petition, and, is constrained to allow the same, as such the instant petition is allowed, and, the impugned Annexure P-1, is quashed, and, set aside. The petitioner is ordered to be released on parole for 28 days, from the prison concerned, but subject to his furnishing personal and surety bonds in a sum of Rs. 1 lac each, and, to the satisfaction of the District Magistrate concerned, where he is extantly lodged, and, but with an undertaking therein that immediately on expiry of the afore period, he shall re-step into the prison concerned. The stepping outside the prison of the convict-petitioner shall commence in the evening of 12.3.2024, and, shall last uptill the morning of 9.4.2024.

6. If the above condition is breached, and, the petitioner does not re-step into the prison concerned, immediately on the expiry of 28 days, i.e. on 9.4.2024, thereupon, liberty is reserved to the jurisdictional SHO concerned, to forthwith arrest the petitioner, and, to thereafter produce him before the jurisdictional Magistrate concerned, for the latter making an order for the petitioner becoming committed to the prison concerned.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 12th, 2024
Ithlesh

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