

CRWP-2360-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-2360-2023

Date of decision: 29.04.2024

SUKHVIR SINGH ALIAS SUKHA

... PETITIONER

V/s

STATE OF PUNJAB & OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Bandana Trikha Sachdev, Advocate
for the petitioner. (Through Video Conferencing)
Mr. Anup Singh, AAG, Punjab.

SUMEET GOEL, J.

1. This case has a chequered history and sordid saga of arbitrary and colourable exercise of administrative power by the respondents, in application whereof, the request for grant of parole made by the petitioner has been declined.

2. Facts germane to the adjudication of issue in the present case are that the petitioner is confined in Central Jail Shri Goindwal Sahib, undergoing conviction of life imprisonment, in case FIR No.93 dated 09.09.2008, registered at Police Station Khamano, District Fatehgarh Sahib, under Sections 302, 363, 376, 201, 177, 34 IPC. He is convicted in the said case vide judgment dated 25.02.2010 passed by the Court of Sh. P.S. Virk, Additional Sessions Judge, Fatehgarh Sahib.

3. The uncontroverted averments borne out from the pleadings in the criminal writ petition that petitioner has availed 14 paroles peacefully while undergoing his conviction in the above case. It is pleaded that after the

amendment in Section 2(aa) of the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 notified on 07.01.2016 the petitioner was non-suited for the grant of parole by the Jail Authorities in view of the said amendment. It is pertinent to mention that vide the said amendment it was provided that a person confined in prison under a sentence of imprisonment, who has been convicted of an offence of rape with murder under Section 376 read with Section 302 of the Indian Penal Code, 1860, shall be treated as a hardcore prisoner. As per Section 5-A of the said Act, a hardcore prisoner is not entitled to be released on parole.

4. Averments in the criminal writ petition shows that the petitioner in pursuance to rejection of his request on parole on an earlier occasion had approached this Court, by filing a civil writ petition No.9699 of 2018. This Court vide order dated 11.09.2019 allowed the civil writ petition filed by the petitioner and held him entitled to 3 weeks parole. The order dated 11.09.2019 passed by this Court is annexed as Annexure P-4 to the present criminal writ petition. This Court in the said order has clearly and unambiguously held that Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, vide which definition of hardcore prisoner is amended, shall not apply to the case of petitioner, as the commission of offence by the petitioner was much prior to the said offence. While holding so this Court relied upon a judgment passed by a Division Bench of this Court in case of ***Sonu @ Arun vs. State of Haryana and others in CRWP No.1078 of 2014.***

5. It is not the case of any of the parties that the abovementioned judgment dated 11.09.2019 was challenged, varied or set aside in any legal proceedings. The judgment dated 11.09.2019 attained finality and decided the issue with regard to non-applicability of Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, to the case of Petitioner finally.

6. However, the petitioner moved an application for grant of parole for agricultural purposes in the month of March, 2020. The said request of the

petitioner was declined by the Magistrate by giving reason that petitioner is a hardcore criminal and as per the direction given by the committee chaired by the Hon'ble Justice R.K. Jain, constituted during the Covid-19 Pandemic period.

7. Aggrieved by the factum of the decline of his prayer for release on parole, the petitioner approached this court by filing a criminal writ petition bearing No. CRWP 1567 of 2021. The said writ petition was disposed of by this Court on 06.08.2022 in terms of the following order:

“After hearing counsel for the parties, the Court finds that the view taken by the respondent No.2 in order dated 24.04.2020 in declining the prayer of the petitioner for the grant of the parole is not legally justified and thus, the same is set aside. The authorities are directed to reconsider the case of the petitioner and pass appropriate order within a month in the light of the relevant instructions as on date.”

8. The respondents thereafter, while considering the case of the petitioner for grant of parole, in compliance with directions passed by this Court vide order dated 06.08.2022 passed in CRWP No.1567 of 2021, again rejected the prayer of the petitioner for grant of parole, vide Annexure P-3 dated 02.09.2022. The operative part of the order dated 02.09.2022 passed by the District Magistrate, Fatehgarh Sahib is reproduced below:

“5. Through Hon'ble High Court CRWP 1567/21, dated 06.08.2022, the petitioner's parole was allowed with the direction to the authorities to reconsider and pass the appropriate order within a month in the light of the relevant instructions as on date. The undersigned has rejected the parole case for eight weeks of the convict Sukhvir Singh s/o Bhag Singh that was sent to this office by the Superintendent Jail, Nabha vide No.66 dated 18/04/2020 that the convict comes under the category of hardcore prisoners. Hence, his case for eight weeks parole is rejected.”

9. However, perusal of Annexure R-1 annexed to the reply on behalf of respondents No.1 and 3, shows that after filing the present writ petition, the petitioner on 25.07.2023 had filed another application seeking parole for 8 weeks to the Superintendent, Central Jail, Shri Goindwal Sahib. The said application on the same day was declined by the Superintendent, Central Jail, Shri Goindwal Sahib vide order (Annexure R-1). It was held therein that the petitioner falls into the hardcore prisoner category as per The Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, therefore, he is not entitled to parole.

10. Perusal of (Annexure R-1), order dated 25.07.2023 whereby prayer of the petitioner for grant of parole is rejected, again mentions the sole ground for such rejection, that the petitioner is a hardcore prisoner in terms of The Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015.

11. Facts narrated above clearly speak volumes about the clumsy and cursory manner in which the respondents have acted while declining the prayer of the petitioner for grant of parole. Apart from being erroneous, wrong and illegal, the orders declining the request of the petitioner for seeking parole suffers from the vice of non-compliance of judicial order dated 11.09.2019 passed by this Court in civil writ petition No.9699 of 2018, filed by the petitioner.

12. As noted in the previous part of this order, this Court vide order dated 11.09.2019 passed in civil writ petition No.9699 of 2018, has already conclusively held that the provisions of The Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, amending the definition of a hardcore prisoner are not applicable to the petitioner. That judgment of this Court had already attained finality. For this simple reason the impugned orders passed in derogation of the order passed by this Court are not sustainable. The respondents have repeatedly raked up the same issue of applicability of The Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 to the case of the petitioner, while availing parole, which has already been settled. The said act on part of the respondents reeks of judicial indiscipline. The respondents being instrumentalities

of a welfare state are expected in law to act fairly and in an unpartisan manner. Respondents are bound to adhere to the decision of this Court and cannot be permitted to flout the decision of this Court based on their own whims and fancies. The Hon'ble Supreme Court while dealing with the concept of treating the judicial pronouncements of the parties indifferently, for their own vested interests in the case of ***Mary Pushpam Versus Telvi Curusumary & Ors., 2024(3) SCC 224*** has held as under:

“The respondents never sought any clarification of the findings of the High Court or the observations made therein nor did they assail the same before any higher forum. The judgement dated 30.03.1990 attained finality. Interpreting the said judgement which was clear in itself any differently would clearly amount to judicial indiscipline.”

13. Perusal of the order Annexure R-1 and Annexure P-3 clearly shows that the said orders have been passed in utter disregard to the settled principle of stare decisis. Apart from that the impugned orders are result of total lack of application of mind by the respondents to the facts and circumstances of the case as well as the order 06.08.2022, of remand passed by this Court in CRWP 1567 of 2021, wherein, it was held that the view taken by respondents in declining the prayer of the petitioner for grant of the parole is not legally justified. Yet the respondents have the audacity to pass the exactly same orders of rejection of parole of the petitioner on verbatim same grounds as in the earlier order passed by them, which is set aside by this Court for want of legality in reasons. The respondents have not given any reasoning as to why the case of the petitioner for grant of the parole does not fall within the scope and ambit of the earlier judgment passed by this Court vide order dated 11.09.2019 passed in CWP No.9699 of 2018. The act on part of the respondents to simply ignore the judgment passed by this court, crystalizing and finalizing the rights of the parties, with regard to the controversy involved in the present case, clearly smacks of malafides and has the tendency to pollute the stream of justice and majesty of law. The Hon'ble Supreme

Court in the case of ***Ajit Prasad Gupta versus State of U.P., 1997(6) SCC 279*** has held as under:

“We take a serious view of the matter and condemn this practice of filing petition after petition. No litigant has a right to unlimited drought on court time and public money in order to get the affair settled in the manner he wishes. Finality of judicial proceedings must be accepted at some stage. We cannot allow the process of the court to be abused in the manner it has been done by the petitioner in this case. We dismiss this writ petition with Rs. 5,000/- as costs.”

14. In the case of ***A. Shanmugam Versus Ariya K.R.K.M.N.P. Sangam Tr. Pres. Etc., 2012(6) SCC 430*** it is held by the Hon’ble Supreme Court as under:

“Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.”

15. In view of my foregoing findings, the impugned orders (Annexure P-3 and R-1), rejecting the request of petitioner for grant of parole on the ground of petitioner being ‘Hardcore Prisoner’ as defined in Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015, are set aside. The respondents are directed to release the petitioner on parole, if his request for grant of parole is not suffering by any other ground disentitling him from grant of parole for any legal and valid reason. The said order shall be passed within 2 weeks of receipt/ production of certified copy of this order. Keeping in view the entirety of facts and circumstances of the case, the respondents No.2 and 3 are saddled with costs of Rs.25,000/- each. The said costs shall be deposited with the Punjab State Legal Services Authority within 2 weeks from receipt of copy of this order. The

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respondents are further directed to submit a compliance report before the registry of this Court.

(SUMEET GOEL)
JUDGE

April 29, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No