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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP No.4589 of 2023
Date of decision: 10.09.2024
Reserved on: 17.07.2024

Shamsher @ Lalu ... Petitioner

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S.S. Rana, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The petitioner being aggrieved by the order dated 18.04.2023 as passed by the respondent No.3 i.e. Superintendent of Jail, Central Jail, Hisar whereby prayer made by him for releasing him on parole for a period of ten weeks, has filed this petition under Article 226 of the Constitution of India thereby making prayer for issuance of a writ in the nature of certiorari for quashing the abovementioned order.
2. As submitted in the petition, the petitioner was booked for commission of offences punishable under Section 302 of IPC and Section 25 of Arms Act, 1959 (For short “Act, 1959”) in case arising out of FIR No.763 dated 09.10.2006 registered at Police Station City Hisar. He faced trial and vide judgment dated 17.11.2008, had been held guilty and

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sentenced to undergo rigorous life imprisonment for commission of offence under Section 302 of IPC and to undergo rigorous imprisonment for three years under Section 25 of Act, 1959. An appeal filed by him against the said judgment had been dismissed by this Court vide judgment dated 28.05.2012. The petitioner after undergoing a period of more than 14 years 8 months of actual sentence of imprisonment including remission period of more than 19 years, moved application for releasing him on temporary parole for a period of ten weeks for the purpose of meeting his family members. This prayer had, however, been rejected by respondent No.3 by observing that he came under the category of hardcore convicted prisoner as defined under Section 2 (1) (g) of Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (For short “Act, 2022”) and could be released on temporary parole only after completion of five years of imprisonment as per Section 6 (3) of the Act, 2022 from the date of commission of the last offence, which period had yet not been completed by him.

3. It was argued by learned counsel for the petitioner that the impugned order was not sustainable in the eyes of law as the respondent No.3 had considered him to be falling under the category of hardcore convicted prisoner as defined in Section 2 (1) (g) of the Act, 2022 while ignoring the fact that he was held guilty, convicted and sentenced way back in the year 2008 when the provisions of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (For short “Act, 1988”) were

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applicable and not the provisions of Act, 2022. It is submitted that the definition of “*hardcore prisoner*” was inserted in the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 (For short “Act, 2012”) i.e. four years after conviction of the petitioner. It was argued that the provisions of Act, 2012 and Act, 2022 being prospective in nature were not applicable to consider the case of the petitioner for grant of parole as the rules which were in existence/prevalent at the time of his conviction i.e. the provisions of Act, 1988 were to be applied in his case.

4. While conceding that during the period of his previous parole, two cases bearing FIR No.151 dated 25.03.2021 and FIR No.427 dated 01.07.2020 were registered against him, he stressed that he had been extended benefit of bail in both of those cases, there was no apprehension of danger to society and breach of public peace, if he was released on parole and that he was eligible to avail the benefit of temporary parole under the provisions of Act, 1988 as well as Act, 2012. Accordingly, it was urged that the impugned order was liable to be quashed and the petitioner deserved to be given benefit of parole for a period of ten weeks. To fortify his argument, learned counsel for the petitioner placed reliance upon authorities cited as **Sukhvir Singh alias Sukha v. State of Punjab and others**, 2024 (2) RCR (Criminal) 793; **Golu v. State of Haryana and others**, CRWP No.11468 of 2023 decided on 19.01.2024; **Manoj v. State of Haryana and others**, 2016 (4) R.C.R. (Criminal) 490;

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Karan Singh v. State of Haryana and others, CrI. W.P. No.2747 of 2011 decided on 17.01.2012 & **Varun @ Gullu v. State of Haryana and others**, CrI. Misc. No.M-34013 of 2009 decided on 26.04.2010.

5. The respondents filed a joint reply submitting therein that during the period of release of the petitioner on temporary parole, he committed other offences and as many as four cases had been registered against him. He had even absconded during parole period. He had committed cognizable offences punishable with imprisonment for a period of seven years and above during the abovesaid period and hence, he had fallen under the category of “*hardcore prisoner*” as per Clause 2 (1) (g) (vi) of the Act, 2022 and hence, was not entitled for being released on temporary basis on parole since he had only undergone a period of 01 year 11 months and 16 days after the date on which he had become a hardcore convicted prisoner. While submitting that the prayer made by him had been rightly declined, it was urged that the petition did not deserve to be allowed.

6. The term “*hardcore prisoner*” was firstly introduced by the Amendment Act, 2012 whereby Clause (aa) was inserted in Section 2 of the Act, 1988. This provision reads as under:-

“(aa) “hardcore prisoner” means a person, who-

- (i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war

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against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or

- (ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone imprisonment atleast for a period of twelve months :

Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded.

Explanation.-- A conviction which has been set-aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

- (iii) has been sentenced to death penalty; or
(iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or
(v) failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act;”

7. Then the definition of “*hardcore convicted prisoner*” was given in Section 2 (1) (g) of the Act, 2022. Relevant part of the definition

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as applicable to the present case is given in Section 2 (1) (g) (vi) reads as under:-

“2. (1) *In this Act, unless the context otherwise requires :*

(g) ‘hardcore convicted prisoner’ means any prisoner –

(i) to (v) xxxxxxxxxx [not relevant]

(vi) who commits a cognizable offence punishable with imprisonment for a period of seven years or above during confinement in the jail or during his temporary release under this Act; or”

8. Then as per Section 6 of the Act, 2022, parole to a convicted prisoner can be granted subject to compliance of certain conditions. As per sub-Section (3) of this Section, 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 undertrial 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. On a cursory perusal of these provisions, it is very much clear that a convict who falls under the category of hardcore convicted prisoner and has not been awarded death penalty or life imprisonment till natural life, can be granted temporary parole on completion of period of five years of such sentence during which he has not committed any jail offence or any cognizable offence. Meaning thereby that a convict committing offences punishable with imprisonment for a period of seven years or above during confinement in

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jail or during temporary release under the Act, 2022 would fall within the definition of hardcore convict.

9. The question that arises for consideration before this Court is as to whether the petitioner fall within the definition of “hardcore convicted prisoner” as given in Act, 2022 and whether the provisions of Section 6 (3) of this Act could be made applicable in his case while considering the question of his release on temporary parole.

10. It is not in dispute that during the period when the petitioner had been released on parole on previous occasions, he was booked for commission of certain offences and four FIRs were registered against him the details of which are as follows:-

“(i) FIR No.427 dated 01.07.2020 under Section 25 of Act, 1959 at Police Station City Hisar.

(ii). FIR No.151 dated 25.03.2021 under Sections 392, 395, 397, 341, 506, 212 and 120-B of IPC and Section 25 of Act, 1959 at Police Station Barwala, Hisar

(iii). FIR No.353 dated 21.05.2021 under Section 25 of Act, 1959 at Police Station Sadar Hisar

(iv) FIR No.795 dated 01.11.2021 under Sections 398, 401, 115 and 120-B of IPC and Section 25 of Act, 1959 at Police Station City Hisar.”

11. Admittedly, he has not been held guilty and convicted in the cases which were allegedly committed by him during the parole period

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and he is facing trial in those cases. Therefore, apparently and evidently, he does not fall within the definition of a hardcore convicted prisoner within the meaning of Section 2 (1) (g) (vi) as given in the Act, 2022. More so, the definition of “*hardcore convicted prisoner*” had come into being after introduction of the Act, 2022. The petitioner was held guilty and convicted much prior to insertion of the aforementioned provision. He did not fall within the definition of “*hardcore prisoner*” as inserted in sub-Section (aa) in Section 2 of the Act, 1988 by way of Amendment Act, 2012. As such, it cannot be stated that he had fallen into the category of hardcore convicted prisoner as defined in the Act, 2022 which had come into operation much after the date of his conviction, the reason being that the provisions of Act, 2022 can be made applicable prospectively and not retrospectively. Reliance in this regard can be placed upon the observations made by the Hon’ble Supreme Court in **State of Haryana and others v. Jagdish**, 2010 (4) SCC 216, wherein, the petitioner was convicted and sentenced in the year 1999. The convict prayed for grant of clemency as per the policy prevailing on the date of his conviction. His case was not considered in view of the new policy introduced on 13.08.2008. It was observed that right of the petitioner to get his case considered in terms with the policies which were in force at the time of his conviction, could not be taken away by the subsequent policy and it was to be considered on the strength of the policy that was existing on the date of his conviction.

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12. Recently, a Coordinate Bench of this Court in **Golu v. State of Haryana and others's** case (Supra) and other connected petitions, had considered the same question and while relying upon the ratio of law as laid down in **State of Haryana v. Jagdish's** case (Supra), observed that since the petitioners therein were convicted and sentenced in the year 2003, the provisions of Act, 2022 could not be applied retrospectively. While allowing the petitions, direction was given for release of the petitioners on parole for a period of eight weeks. Applying the above discussed position of law to the present case, it is observed that since the petitioner had been held guilty and convicted in the year 2008 when the provisions of Act, 1988 were applicable and which did not lay down any condition for release of a convict on parole for a temporary period only after he had completed five years of his sentence, without committing any major jail offence or any cognizable offence during the last five years and as he did not fall within the definition of "*hardcore prisoner*" or "*hardcore convicted prisoner*", therefore, the provisions of Section 6 (3) of the Act, 2022 could not be made applicable qua him either retrospectively or otherwise. Undoubtedly, right of a convict to get himself released temporarily on parole is not a substantive right and it is a concession given to convict during his imprisonment, on fulfilling certain conditions which have been prescribed under the Principal Act i.e. Act, 1988. However, such benefit cannot be denied to a convict by invoking the provisions which have come into operation prospectively. It

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is not the case of the respondents that the petitioner was not otherwise eligible to avail parole under the Act, 1988. His application was duly supported by statement of the Municipal Councilor, Hisar (Annexure P-4) certifying that there would be no apprehension of breach of public peace if he was released on parole. In view of this discussion, the petition is allowed. The impugned order dated 18.04.2023 is set aside. The respondents are directed to release the petitioner on parole for a period of four weeks, if no other legal ground is found disentitling him from grant of parole. The order of his release on parole for the aforementioned period shall be passed by the respondents within a period of four weeks from today.

10.09.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No