



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Writ Petition No. 4906 of 2024 (O&M)
Date of Decision: July 03, 2024

Dharmender

..... PETITIONER(s)

Versus

State of Haryana and others

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Bandana Trikha, Advocate
for the petitioner. (through video conferencing)

Mr. Raman Sharma, Additional A.G., Haryana.

LISA GILL, J.

1. Prayer in this petition is directing the authorities to release the petitioner on emergency medical parole for six weeks under Section 3(1)(a) the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'Act, 1988') and under Section 5 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2022 (for short 'Act, 2022').

2. Petitioner is presently undergoing imprisonment after his conviction under Sections 201, 302, 304-B, 498A, 120-B IPC vide judgment of conviction and order of sentence dated 05.07.2019, passed by the learned Additional Sessions Judge, Jhajjar in FIR No.461 dated 16.12.2015, Police Station Kanina, District Mohindergarh. He has been sentenced to undergo rigorous imprisonment till his biological life. Criminal Appeal, CRA-D No.964-DB of 2019 against the said conviction and sentence is pending.

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2. Learned counsel for petitioner submits that petitioner is entitled to emergency parole on account of cataract surgery to be performed upon both eyes of his mother who is living on her own with none to look-after her. Petitioner's father, it is informed is no more. Petitioner is not involved in any jail offence with his conduct and behaviour being good. It is stated that he has undergone custody for a period of over 10 years, in case period of remission is included. Therefore, six weeks' parole should be granted to petitioner.

3. Learned counsel for the State while referring to the short reply filed by Deputy Superintendent, District Prison, Jhajjar, on behalf of respondents, submits that in view of Section 6(3) of Act, 2022, petitioner not having undergone period of 07 years after conviction is not entitled to emergency parole. Dismissal of petition is sought.

4. We have heard learned counsel for the parties and have gone through the file with their able assistance.

5. Stand taken by the respondent-State in this writ petition is that petitioner is not entitled for any kind of emergency parole or regular parole because he has not completed 07 years' imprisonment after conviction in terms of Section 6(3) of the Act, 2022. It is stated in para 7 of the said reply that medical condition of petitioner's mother namely Smt. Sakuntla wife of Tek Chand has been verified through SHO, Police Station Kanina, District Mohindergarh. As per report dated 28.05.2024, submitted by the said SHO, statement of respectable persons of the village was recorded according to which petitioner's mother is suffering from weak vision and she lives alone at her home with no-one to look-after her. It is further verified that she is taking treatment from one Govind Eye Hospital, Mohindergarh and she has been advised cataract surgery for diminution

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of vision in both eyes. Statements of the inhabitants of the village was recorded besides the medical report issued by Dr. Avinash Sharma, MBBS, DOMS, Consultant Eye Surgeon, Govind Eye Hospital, Old Narnaul Road, Mohindergarh, are attached as Annexure R-III, R-III/T and R-IV. Therefore, it is informed and verified that mother of petitioner (a senior citizen) is indeed living alone with none to take care of her.

6. Section 6(3) of Act, 2022 reads as under:-

(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:

Provided that a hardcore convicted prisoner who has been sentenced for imprisonment till natural life shall be eligible for emergency parole or 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 three years.

7. Perusal of custody certificate attached alongwith the reply reveals that petitioner has undergone a period of 03 years, 06 months and 14 days as under trial and has undergone actual imprisonment of 04 years, 10 months and 26 days as on 30.05.2024 after his conviction on 05.07.2019. It is useful to refer to order dated 26.08.2020, passed in CRWP-4219-2020 wherein the question involved was the method of computation of the period of imprisonment to be considered while granting parole or furlough to a hardcore prisoner. Stand of the

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State that period of 05 years' imprisonment in respect to a hardcore prisoner is to be counted from the date the prisoner fell in the said category as such was negated while holding that a prisoner who has completed 05 years' imprisonment which does not include more than 02 years' imprisonment as under trial shall become entitled to parole or furlough. Bare perusal of Section 6(3) of the Act, 2022 shows that the proviso in respect to the hardcore convicted person who has been sentenced to imprisonment till natural life has to be read in conjunction with Section 6(3) itself. In this situation, if a period of 02 years of imprisonment undergone by petitioner as under trial is added to the custody period undergone after conviction, same admittedly adds upto 07 years as on today.

7. Keeping in view the facts and circumstances as above, this writ petition is disposed of while directing the competent authority to treat the present writ petition as an application for emergency parole on behalf of petitioner and decide the same in accordance with law, keeping in view the observations as made in the foregoing paras. Necessary decision be taken by the competent authority expeditiously and definitely within one week from today with the decision being communicated to petitioner.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

July 03, 2024
sunil

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