

Sr. No.108

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

CRWP-9415-2023
Date of decision: 30th January, 2024

HARCHET SINGH @ CHET SINGH**Petitioner**

versus

STATE OF PUNJAB AND OTHERS**Respondents**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sarvesh Malik, Advocate
for the petitioner.

Ms. Himani Arora, A.A.G.,Punjab.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India for issuance of a direction to the respondents to release the petitioner for 08 weeks' parole by setting aside the impugned order dated 24.08.2023 (Annexure P-2), passed by the Jail Superintendent, Bathinda (respondent No.3).
2. The petitioner has challenged the order of conviction and sentence by way of filing Criminal Appeal No. CRA-162-DB-1993, which is stated to be pending before this Court.
3. Learned counsel for the petitioner contends that the petitioner is behind bars since 1991 and he has undergone a total sentence of more than 35 years and 09 months. He has applied for parole of 08 weeks to meet his family members and look after the household affairs. However, the Superintendent, Central Jail, Bathinda (Annexure R-3) has rejected the said request by passing an arbitrary impugned order dated 24.08.2023 (Annexure P-2). Reliance was placed upon the

decision by the Division Bench of this Court in CRWP-2634-2021, titled as “**Rakesh Kumar @ Goldy vs. State of Punjab and Others**” and it was contended on behalf of the petitioner that in similar cases, the order of declining the parole was set aside.

4. Learned State counsel has filed reply by way of affidavit of Sh. N.D. Negi, Senior Superintendent, Central Jail, Bathinda, wherein, it is alleged that the petitioner is convicted under Section 302 IPC read with Section 376(2)(f) IPC, as such, the crime committed by the petitioner falls within the category of “Hardcore Prisoner”, as such, as per Section 5A of the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016, the petitioner is not eligible for grant of parole.

4.1 Learned State counsel further contends that in view of the amended provisions by way of implementation of Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016, the Jail Superintendent has rightly dismissed the application filed by the petitioner for grant of parole.

5. I have considered the aforesaid contentions.

6. The request of the petitioner for grant of parole was declined by passing the impugned order dated 24.08.2023 (Annexure P-2) and the following reasons have been recorded therein:-

“xxx xxx xxx xxx

You have applied for your parole in this office. In this regard, you are informed that in the said case you have been charged under Section 302.376 IPC. And is serving life imprisonment. According to section 2 of the Punjab Good Conduct Prisoners (RG Release) Amendment Act, 2015, the offense committed by you falls under the category of hardcore prisoner. Therefore, as per section (04) of this act, any hardcore who has been sentenced to death or by whom If the offense falls under the Heinous category then the prisoner will not be eligible for release.

Therefore, you are hereby informed that as the offense committed by you falls under the Heinous category and it is not a parole case as per Para No. 04

Sub Section 5 A (a) of the Punjab Good Conduct Prison (Temporary Release) Amendment Act 2015 and the same cannot be considered. This is for your information.

xxx xxx xxx xxx”

7. As per Section 2(i)(a)(aa), all “Hardcore Prisoners” were defined as per The Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 which reads as under:-

“xxx xxx xxx xxx

(aa) “hardcore prisoners” means a person confined in prison under a sentence of imprisonment, who has been convicted of-

(i) an offence of rape with murder under Section 376 read with section 302 of the Indian Penal Code, 1860;

(ii) an offence punishable under section 14 of the Protection of Children from Sexual Offences Act, 2012;”; and

xxx xxx xxx xxx”

8. Section 5-A was incorporated as per the said amended Act which reads as under:-

““5-A” Notwithstanding anything contained in section 3 and 4:-

(a) no prisoner shall be entitled to be released under this act to whom the death sentence has been awarded or is a hardcore, prisoner;

(b) Notwithstanding anything contained in clause (a), hardcore prisoner may be allowed to be released temporarily on the ground specified in clause (a) or clause (b) of sub-section (1) or section (3). However, extra condition may be imposed on the prisoner at the time of temporary release or furlough after considering all the facts and circumstances of the case.”

9. The said question arose before the Hon’ble Division Bench of this Court in CRWP-2634-2021, titled as “**Rakesh Kumar @ Goldy vs. State of Punjab and Others**” wherein it was held that the provisions of the Amendment dated

07.01.2016 would apply prospectively and not retrospectively. The following observations were made:-

“xxx xxx xxx xxx

Thus, the provisions of the Amendment dated 07.01.2016 (P-1) would not apply retrospectively and would apply prospectively. The amendment made on 07.01.2016 (P-1) would not be made basis for rejecting the claim of the petitioner for grant of parole. The petitioner was convicted in the year 2015 and after the amendment was made on 07.01.2016, for all intents and purposes, the case of the petitioner ought to have been considered by treating him as prisoner and not hard core criminal, as per Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016.

xxx xxx xxx xxx”

10. As per the custody certificate (Annexure P-1), the petitioner has been convicted and sentenced by the Sessions Judge, Bathinda vide judgment and order dated 28.04.1993 to undergo sentence in the FIR which was registered on 21.03.1991.

11. The request for granting the benefit of parole to the petitioner has been declined primarily on account of the amendment having been made in the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016, which came into force on 18.12.2015 i.e. the day of its publication in the official gazette. The petitioner was convicted and sentenced prior to that, as per order dated 28.04.1993.

12. In view of the ratio of the aforesaid decision, the reasons recorded by the Superintendent, Central Jail, Bathinda, for denying grant of parole to the petitioner, cannot sustain. The process of release of the prisoners to meet their family members is a reformatory process with a view to re-introduce the prisoners to normal life. It is also necessary for the emotional and mental health of the prisoners.

13. In view of the above, the impugned order dated 24.08.2023 (Annexure P-2), passed by the Jail Superintendent, Bathinda (respondent No.3) is not sustainable in the eyes of law. The case of the petitioner is required to be considered by treating him as a ‘prisoner’ and not as a ‘Hardcore Criminal’ by retrospectively applying the Act amended on 07.01.2016 i.e. Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2016.

14. Consequently, the present writ petition is allowed. Impugned order dated 24.08.2023 (Annexure P-2), passed by the Jail Superintendent, Bathinda, is set aside. A direction is given to the respondents to consider the case of the petitioner for grant of parole after treating him as a “Prisoner” and not as a “Hardcore Criminal”. The exercise be completed within a period of 06 weeks on receipt of a certified copy of this order.

(HARPREET KAUR JEEWAN)
JUDGE

30th January, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No