

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.108

LPA-434-2024

Reserved on: 12.02.2024

Pronounced on: 05.03.2024

Pawan

..... Appellant

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
 HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Ms.Anjali Sheoran, Advocate, for the appellant.

Ms.Shubhra Singh, Addl.A.G., Haryana.

* * * * *

DEEPAK SIBAL, J.

1. Through judgment dated 18.12.2015, the Additional Sessions Judge, Rohtak (for short, the trial court) convicted the appellant under Sections 302, 376-D, 377, 366, 201 read with Section 120-B IPC.

2. For commission of the offence under Section 302 IPC the appellant was awarded the death penalty; for the commission of the offence under Sections 376-D read with Section 120-B IPC he was awarded punishment of life imprisonment for the remainder of his natural life; for the commission of the offence under Section 366 read with Section 120-B IPC he was sentenced to undergo rigorous imprisonment for ten years and that he was sentenced to undergo rigorous imprisonment for seven years for commission of the offence under Section 201 read with Section 120-B IPC.

3. Through CRA-D-99-DB-2016 filed before this Court, the appellant challenged his conviction and sentence which appeal of his was dismissed by a Co-ordinate Bench on 19.03.2019. Through Special Leave to Appeal (Criminal) No(s).5060-5066/2019 titled as *Padam @ Parmod & others etc. vs. The State of Haryana*, the appellant, alongwith his co-convicts, then knocked the doors of the Supreme Court. On 04.07.2019 the Supreme Court granted leave and in the

meanwhile stayed the execution of the appellant's death sentence. The appellant's criminal appeal remains pending before the Supreme Court.

4. On 30.10.2023 the appellant filed a petition before this Court being CRWP-10846-2023-*Pawan vs. State of Haryana and others* seeking therein issuance of directions to the State to release him on parole to enable him to attend the marriage of his niece. On being put to notice, the State opposed the appellant's prayer. According to the State because the appellant had been convicted for rape and murder, in terms of Section 2(g) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (for short-the 2022 Act), he was a "hardcore convicted prisoner". Therefore, in view of Section 6(2) of the 2022 Act he could not be released on parole to attend the marriage of his niece as a "hardcore convicted prisoner" could be granted parole and that too in custody, for only attending the marriage of his own children or siblings.

5. In response to the stand taken by the State the appellant relied on the interim order of the Supreme Court dated 04.07.2019 wherein execution of the appellant's death sentence had been stayed. According to the appellant, after the stay on the execution of his death sentence, the appellant was required to be considered as a convict undergoing life imprisonment and in that eventuality his case, for the grant of parole, would be covered under the first proviso to Section 6(3) of the 2022 Act as per which a "hardcore convicted prisoner" who was sentenced to undergo life imprisonment could be granted parole at par with other convicted prisoners after he had undergone seven years of imprisonment after his conviction, which the appellant had.

6. Through the judgment impugned before us the learned Single Judge has held that even though the appellant, after his conviction, had been in custody for over seven years, he would still not be entitled to the grant of parole for the reason that even if the execution of his death sentence has been stayed by the Supreme Court his case

could not be considered under the first proviso to Section 6(3) of the 2022 Act as he would still continue to be a “hardcore convicted prisoner” and that he would not be entitled to the benefits under the first proviso to Section 6(3) of the 2022 Act till the setting aside of his death penalty.

7. Learned counsel for the appellant submits that through order dated 04.07.2019, while granting leave in the appellant’s Special Leave to Appeal (Criminal), the Supreme Court has stayed the execution of the appellant’s death sentence; in the light of the order of the Supreme Court dated 04.07.2019 the only punishment *qua* the appellant which presently subsisted was life imprisonment for the remainder of his natural life and therefore, even as a “hardcore convicted prisoner”, the appellant’s case for the grant of parole is required to be considered like any other convicted prisoner in terms of the first proviso to Section 6(3) of the 2022 Act.

8. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

9. The relevant provisions of the 2022 Act read as under: -

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

(a) to (f) xxx xxx xxx

(g) "hardcore convicted prisoner" means any prisoner: -

(i) who has been convicted for any of the following offences: -

(1) to (4) xxx xxx xxx

(5) rape or penetrative sexual assault or aggravated penetrative sexual assault or unnatural offence with murder under section 376 or section 377 read with section 302 of the Indian Penal Code, 1860.”

(6) to (14) xxx xxx xxx

(ii) xxx xxx xxx

(iii) who has been sentenced to death penalty or imprisonment till natural life.”

“2(k) “Sentence” means sentence of imprisonment finally delivered in appeal or revision or otherwise and includes an aggregate of one or more sentence.”

“6. (1) The competent authority shall grant custody parole to a convicted prisoner subject to such conditions and procedure as specified under sections 11 and 12.

(2) Notwithstanding anything contained in sections 3, 4 and 5, no hardcore convicted prisoner shall be entitled to be released on emergency parole or regular parole or furlough:

Provided that a hardcore convicted prisoner may be granted custody parole for attending funeral of his family members or marriage of his children or siblings.

(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.”

10. Amongst other sections of the IPC the appellant stands convicted under Sections 376-D and 302 IPC. He has also been sentenced to death for the commission of the offence under Section 302 IPC and further sentenced to undergo life imprisonment till the remainder of his natural life for commission of offences under Section 376-D read with Section 120-B IPC. Thus, in terms of Section 2(1)(g)(5) as also Section 2(1)(g)(iii) of the 2022 Act he is a “hardcore convicted prisoner”.

11. Section 6 of the 2022 Act deals with the grant of parole to “hardcore convicted prisoners”. As per Section 6(2) of the 2022 Act no “hardcore convicted prisoner” is entitled to be released on emergency parole or regular parole. The only exception carved out under the proviso to Section 6(2) is to the grant of parole but in custody to a “hardcore convicted prisoner” to enable him to attend the funeral of any of his family members or the marriage of his children or siblings.

12. Section 6(3) of the 2022 Act provides that a “hardcore convicted

prisoner” who has been awarded the death penalty or life imprisonment till his natural life is not entitled to grant of parole. However, “hardcore convicted prisoners” who have not been awarded the death penalty or life imprisonment till the remainder of their natural life and have completed five years of their sentence, which includes two years trial period and who have not committed any major jail offence or any cognizable offence during the last five years, are eligible for the grant of emergency parole or regular parole at par with other convicted prisoners. The only exception carved out under the first proviso to Section 6(3) is that a “hardcore convicted prisoner” who has been sentenced to undergo life imprisonment till the remainder of his natural life would become eligible for the grant of emergency parole or regular parole at par with other convicted prisoners after he has completed seven years of imprisonment after his conviction.

13. Thus, a harmonious reading of Sections 6(2) and 6(3) of the 2022 Act leads us to the conclusion that a “hardcore convicted prisoner” who has been awarded the death penalty is entitled to be granted parole but in custody only to enable him to attend the funeral of his family members or the marriage of his children or siblings. In no other circumstance can such a prisoner be granted parole.

14. The appellant is a “hardcore convicted prisoner” who has been awarded the death penalty. He does not seek parole to attend either the funeral of any of his family members or the marriage of his children/ siblings. Therefore, in view of the afore discussion, he is not entitled to the grant of parole.

15. The appellant’s plea that in the light of the interim stay granted by the Supreme Court with regard to stay on execution of his death sentence he should be considered as a “hardcore convicted prisoner” who has been awarded life imprisonment till the end of his natural life and therefore, be held entitled to the grant of parole under the first proviso to Section 6(3) of the 2022 Act is misconceived.

16. The interim order passed by the Supreme Court on 04.07.2019 reads as

under:-

*“Leave Granted.
The execution of death sentence is stayed.”*

17. As per afore quoted order of the Supreme Court, while granting leave in the Special Leave to Appeal (Criminal) filed by the appellant against the dismissal of his criminal appeal by this Court, the Supreme Court, while granting leave, has simply stayed the execution of the appellant’s death sentence. Only the execution of the appellant’s death sentence has been stayed. There is no stay on his conviction. The appellant’s death sentence has not even been suspended. Therefore, he continues to be a “hardcore convicted prisoner” who has been awarded the death sentence. Thus, the appellant’s case would not fall under the first proviso to Section 6(3) of the 2022 Act rendering him disentitled for the grant of parole.

18. In view of the above, we find no infirmity, legal or factual, in the judgment of the learned Single Judge.

19. Dismissed.

[DEEPAK SIBAL]
JUDGE

05.03.2024
shamsher/gk

[DEEPAK MANCHANDA]
JUDGE

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