



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-7739-2023 (O&M)

Date of Decision:-21.8.2025

Sohan @ Sonu

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA**

Present:- Mr. Prateek Rathee, Advocate for the petitioner.

Mr. Munish Sharma, DAG, Haryana.

Ms. Ishma Randhawa, Advocate as Amicus Curiae.

GURVINDER SINGH GILL, J.

1. The petitioner, who stands convicted for having committed offence punishable under Section 302 of Indian Penal Code for having murdered two of his cousins, has approached this Court with the following prayers:

“I. Certiorari to declare Section 2(1)(g)(iii) and Section 6(3) of Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 ultra vires to the Constitution, on account of being in violation of *inter alia* Article 14, 20(1), 21 and to the extent of which it creates prejudice to the rights of 'hardcore convicted prisoners' situated similarly with regards to grant of parole and furlough. Furthermore, the aforesaid statutory provisions also being in violation of law laid down by Hon'ble Supreme Court in "Union of India v. V. Sriharan @ Murugan (2016) 7 SCC 1"

II. Certiorari for quashing the order dated 28.11.2022 (Annexure P-6), passed by the Divisional Commissioner Hisar, Division-Hisar vide which the Commissioner (respondent no.2) has rejected the petitioner's case for temporary release on furlough



for a period of three weeks on the ground that since the petitioner has been sentenced for imprisonment till last breath thus, the petitioner comes under the category of 'hardcore convicted prisoner' and according to Section 6 (3) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 2022, the petitioner does not fulfill the condition of temporary release under the act.

III. Mandamus, directions seeking to the respondents to release the petitioner on furlough for a period of 3 weeks under section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 to break the monotony of prison life/imprisonment and to meet his aged ailing parents.”

2. A few facts necessary to notice are that the petitioner was tried by the Court of learned Additional Sessions Judge, Jind in respect of a case arising out of FIR No.180, dated 23.9.2015 registered at Police Station Pillukhera, under Sections 302, 449, 120-B of Indian Penal Code and Section 27, 54, 59 of Arms Act, whereby learned Additional Sessions Judge, Jind vide its judgment dated 25.5.2018 held the petitioner guilty of having committed offences punishable under Sections 302, 449 of Indian Penal Code and Section 27 of Arms Act and sentenced him as under:

Offence Under Section	Imprisonment	Fine	In default of payment of fine
302 of Indian Penal Code	Rigorous Imprisonment for life till last breath	Rs.10,000/-	Simple imprisonment for a period of six months
449 of Indian Penal Code	Rigorous Imprisonment for 10 years	Rs.10,000/-	Simple imprisonment for a period of three months
27 of Arms Act	Rigorous Imprisonment for three years	Rs.5,000/-	Simple imprisonment for a period of one month



3. The petitioner is presently undergoing his sentence while his appeal challenging his conviction is still pending in this Court. The petitioner had initially moved a representation dated 23.9.2022 for his temporary release on “furlough”, but since no order was passed upon the same, the petitioner approached this Court by way of filing CRWP-10751-2022, which was disposed of vide order dated 16.11.2022 (Annexure P-4) while issuing the following directions:

“Having regard to the said submissions of the petitioner and the statement of learned State counsel, this Writ Petition is disposed of, directing respondent No.2 and 4 to take appropriate action/decision on the petitioner’s representation dt. 23.09.2022 for grant of temporary release on furlough within 2 weeks and communicate their decision to the petitioner.”

4. Thereafter, the case of the petitioner seeking his temporary release on “furlough” was considered, but the same has been declined vide impugned order dated 28.11.2022 (Annexure P-6), passed by the Divisional Commissioner Hisar, Division- Hisar primarily on the premises that the applicant falls in the category of “hardcore prisoner” and thus in terms of Section 6(3) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 2022 (hereinafter referred to as ‘*the 2022 Act*’) would not be entitled to be released on furlough.
5. Although the petitioner has also challenged the vires of Section 6(3) of the 2022 Act, as per which any person, who has been sentenced to undergo imprisonment till the last breath has been included in the definition of “hardcore prisoner”, but learned counsel for the petitioner submitted that infact his primary grievance is against order dated order dated 28.11.2022



(Annexure P-6), whereby case of the petitioner seeking grant of temporary release on furlough has been declined.

6. Learned counsel for the petitioner submitted that in somewhat similar circumstances a Division Bench of this Court in its judgment dated 19.8.2020 passed in CRWP-5238-2020 titled Savitri Versus State of Haryana and others had set aside the order passed by Divisional Commissioner, Hisar for rejection of parole and had directed that a fresh order be passed. Learned counsel for the petitioner submitted that since the Trial Court infact fell in error in imposing the sentence of imprisonment for remainder of his life, which infact the Trial Court was not competent to impose, particularly in view of ratio of judgment of Hon'ble the Supreme Court rendered in Union of India Vs. V. Sriharan @ Murugan (2016) 1 SCC 1, the said sentence cannot be made a basis for rejecting grant of furlough particularly when appeal against the said judgment and order of sentence is pending adjudication in this Court.
7. Opposing the petition, learned State counsel submitted that having regard to the nature of offence committed by the petitioner inasmuch as he had committed a "double murder" he did not deserve to be released on furlough.
8. Ms. Ishma Randhawa, Advocate, who had been appointed as Amicus Curiae in the present case submitted that since a Division Bench of this Court in Civil Writ Petition-PIL No.11 of 2023 titled Shiromani Gurudwara Prabandhak Committee Vs. State of Haryana and others, decided on 09.08.2024 has already considered the question of applicability of the 2022 Act even in case where offence had been committed prior to year 2022, the legality of the provisions of Section 2(1)(g)(iii) of the 2022 Act cannot be called to question.



9. We have considered the rival submissions addressed before this Court.
10. Before proceeding further, it is apposite to bear in mind the changes brought in the relevant provisions pertaining to ‘hardcore convict’ by the 2022 Act vis-a-vis the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988, the said provisions are juxtapose herein-under:

Haryana Good Conduct Prisoner (Temporary Release) Act, 1988	Haryana Good Conduct Prisoner (Temporary Release) Act, 2022
(aa) "hardcore prisoner means a person- (i) who has been convicted of- (1) to (14) xxx xxx xxx (ii) xxx xxx xxx (iii) <u>who has been sentenced to death penalty; or</u> (iv) & (v) xxx xxx xxx (b) to (e) xxx xxx xxx	(g) “hardcore convicted prisoner" means any prisoner- (i) who has been convicted for any of the following offences:- (1) to (14) xxx xxx xxx. (ii) xxx xxx xxx (iii)<u>who has been sentenced to death penalty or imprisonment till natural life; or</u> (iv) to (vii) xxx xxx xxx
4. Temporary release of prisoners on furlough.-- (1) The State Government or any other officer authorised by it in this behalf may, in consultation with such other officer as may be appointed by the state Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who - (a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period	4. Temporary release of convicted prisoner on furlough on certain conditions.- (1) The competent authority shall grant furlough to a convicted prisoner subject to such conditions and procedure as specified under sections 11 and 12. (2) The period for which a convicted prisoner may be released under this section shall be three weeks and this period shall not be availed in parts: Provided that the convicted prisoner who has completed his three/fourth of the total sentence in case of term



of three years, inclusive of the pre-sentence detention, if any; (b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned atleast three annual good conduct remissions; [---] (2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter. (3) Subject to the provisions of clause (d) of sub-section (3) of section 8 the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner.	sentence and ten years in case of life imprisonment, the period of release under this section shall be four weeks and this period shall not be availed in parts. (3) Convicted prisoner who has not completed three years sentence after conviction shall not be eligible for furlough: Provided that the convicted prisoner who has been punished for any jail offence or for violation of conditions of temporary release during the last three years shall not be eligible for furlough: <u>Provided further</u> that the convicted prisoners sentenced under the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) or sedition or rape with murder or robbery or dacoity with murder or murder with intention of collecting ransom or extortion or sexual offences against a child below twelve years of age <u>or sentenced to undergo imprisonment till natural life shall not be eligible for furlough.</u> (4) & (5) xxx xxx xxx
5A. Special provisions for temporary release of hardcore prisoners.-- (1) Notwithstanding anything contained in sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:	6. Temporary release of a convicted prisoner on custody parole and special provisions for hardcore convicted prisoners.- (1) & (2) xxx xxx xxx (3)Notwithstanding anything contained in sub-section (1), a hardcore

Provided that a hardcore prisoners may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned Superintendent of Jail: Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty-four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released. (2) <u>Notwithstanding anything contained in sub-section (1), a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.</u> XXXXXXXXX	convicted prisoner, <u>who has not been awarded death penalty or life imprisonment till natural life</u> 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: <u>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:</u> 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. (4) to (6) XXXXXXXXX
---	---



11. A perusal of the aforesaid provisions shows that stringent provisions have been provided in the matter of grant of temporary release of hardcore prisoners and the definition of ‘hardcore prisoner’ has also to some extent being enlarged. While the classification appears to be based on *intelligible differentia*, but since learned counsel for the petitioner has expressed that he does not press upon his challenge to the vires of the Act at this stage, we need not dwell further into the question of vires of the relevant provisions.
12. As far as the judgment referred to by learned Amicus Curiae is concerned, we find that in the cited case no challenge was ever made to the vires of provisions of the 2022 Act and the only question in the given case was as to whether in a case where the conviction had been recorded prior to 11.4.2022, the 2022 Act would be applicable or not. In the instant case, the petitioner is primarily aggrieved on account of his being treated as “hardcore prisoner” solely on account of the fact that the Trial Court had imposed a sentence of imprisonment for the “remainder of his life”, vide judgment dated 25.5.2018.
13. The appeal against judgment dated 25.5.2018 and order of sentence dated 29.5.2018 passed by learned Additional Sessions Judge, Jind is admittedly still pending in this Court i.e. CRA-D-721-DB-2018. Hon’ble the Apex Court in V. Sriharan’s case (supra) while examining the competency of the Trial Court to impose a sentence of life imprisonment by specifically qualifying it to be for the remainder of life held that such kind of modified punishment when not strictly provided under Indian Penal Code could not have been imposed by the Trial Court and that it is only the High Court or the Supreme Court, which could exercise such powers.



14. The relevant extract from the judgment of Constitution Bench of Hon'ble Supreme Court in V. Sriharan's case (supra) is reproduced hereinunder:

“103. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, **it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.**

104. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, **the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.**



105. Viewed in that respect, we state that the ratio laid down in *Swamy Shraddananda* [(2008) 13 SCC 767] that a special category of sentence; instead of Death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in *Sangeet and Anr. v. State of Haryana*, 2013 (2) SCC 452 that the deprivation of remission power of the Appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same.” (emphasis supplied)”
15. The aforesaid legal position of law is not disputed either by learned State counsel or by learned Amicus Curiae. A Division Bench of this Court in CRWP-5238-2020 titled Savitri Vs. State of Haryana and others, decided on 19.8.2020 was also confronted with a similar issue as in the present case pertaining to rejection of parole on account of the modified sentence of imprisonment for remainder of life imposed by the Trial Court, which had otherwise not attained finality. In Savitri’s case (supra), Hon’ble the Division Bench of this Court had set aside the order of rejection of parole and directed the authorities concerned to decide the matter afresh. The relevant extracts from the aforesaid judgment are extracted hereinunder:
- “14. Therefore, in terms of the law explained by the Constitution Bench of the Supreme Court in **V. Sriharan** (supra), the trial Court in its order dated 16th October 2018 awarding the sentence to the Petitioner of rigorous imprisonment for life was in error in adding the rider that it would be for the remainder of her natural life and without any remission.



15. With this being the clear legal position, the impugned order dated 5th June 2020 passed by the Divisional Commissioner, Hisar rejecting the Petitioner's application for parole on the above grounds is legally unsustainable and is hereby, set aside. The Petitioner's application for parole is remitted to the Divisional Commissioner, Hisar to consider afresh the Petitioner's application for parole in accordance with law. The further ground pointed out by the Petitioner that Pawan, a convict in the related FIR, has been granted parole will be taken note of by the Divisional Commissioner while passing an order afresh on the Petitioner's application for parole. The fresh order be passed not later than 31st August, 2020 and communicated to the Petitioner forthwith and in any event not later than 2nd September 2020. If aggrieved by such order, it will be open to the Petitioner to seek appropriate remedies available to her in accordance with law. The petition is disposed of in the above terms.
16. The Court is informed that notwithstanding the clear legal position explained in **V. Sriharan** (*supra*), the trial Courts have been adding riders to orders on sentence passed by them similar to what the trial Court did in this case. Accordingly, the Court directs that a soft copy of this judgment together with the judgment of the Constitution Bench of the Supreme Court in **V. Sriharan** (*supra*) be circulated by the Chandigarh Judicial Academy through email to all the judicial officers as well as the Jail authorities in the States of Punjab and Haryana and the Union Territory of Chandigarh.”
16. The imposition of sentence of imprisonment till the last breath by learned Trial Court would not stand the test of legal scrutiny particularly in view of **V. Sriharan's** case (*supra*). As far as Savitri's case (*supra*) is concerned, it may here be mentioned that the cited case pertained to grant of “parole” and not “furlough”. ‘Furlough’ to which ‘hardcore convicts’ are disentitled under the 2022 Act would stand on a different pedestal. In any case, we have been



CRWP-7739-2023 (O&M) (12)

informed that in the instant case the petitioner, upon completion of 7 years of sentence, had been granted the concession of parole and that after availing the same, the petitioner surrendered back before the jail authorities within the prescribed time frame.

17. Under the given circumstances, where the petitioner having completed 7 years had already been granted “parole” and his appeal challenging conviction is still pending, we deem it appropriate to dispose of the instant petition while granting liberty to the petitioner to make a mention for early hearing of his appeal before the Bench where the same is listed, so that the issue regarding propriety of imposition of sentence of “rigorous imprisonment for life till last breath” leading to petitioner being termed as a “hardcore convict”, is finally adjudicated.
18. Writ petition stands disposed of in the above mentioned terms.

(GURVINDER SINGH GILL)
JUDGE

21.8.2025
Pankaj

(DEEPINDER SINGH NALWA)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No