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**Kulwant @ Monu**  
V/S  
**State of Haryana and others**

\* \* \*

Present: Mr. Keshav Pratap Singh, Advocate for the Petitioner  
[in CRWP-1890-2020].

Mr. Saurabh Dalal, Advocate for the Petitioner  
[in CRWP-6598-2020].

Mr. Akashdeep Singh, Advocate for the Petitioner  
[in CRWP-2481-2020].

Mr. Ankur Mittal, Additional Advocate General, Haryana.

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1. This order should be read in continuation of the detailed order dated 21<sup>st</sup> August, 2020 passed by this Bench in CRM-730-2020 in CRWP-1890-2020 (*Kulwant @ Monu v. State of Haryana*).

2. The central issue that arises in these petitions concerns the entitlement of prisoners who are “detected of using cell phone or in possession of cell phone/SIM card inside the jail premises” to parole or furlough in terms of Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter ‘Act’).

3. The controversy has arisen on account of different Benches of coordinate strength of this Court taking conflicting views on the interpretation of the definition of ‘hard core prisoner’ under Section 2 (aa) (iv) of the Act. Specifically, one view is that the fact that a prisoner is found to have either used or be in possession of a mobile phone/SIM card is enough to disqualify such prisoner for parole or furlough. Whereas, the

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other view is that unless such prisoner is convicted by a court for such offence which is punishable under Section 42/42A of the Prisons Act, 1894 as applicable to Haryana, the prisoner would not be disentitled to consideration for temporary release on parole or furlough.

4. As far as the judgment of the Division Benches ('DBs') are concerned, as already noted in the order dated 21<sup>st</sup> August, 2020, the decision in ***Vakil Raj v. State of Haryana 2015(93) PLJ (Criminal) 653*** (dated 28<sup>th</sup> November, 2015) takes the view that the mere detection of use or possession of a mobile phone/SIM card with the prisoner attracts Section 2 (aa) (iv) of the Act. This very DB in its decision dated 10<sup>th</sup> August, 2020 in CRWP-5645-2020 (***Mubarik v. State of Haryana***) relied upon the decision in ***Vakil Raj (supra)***, and declined to grant the relief of parole noting further that the fact of the prisoner having been granted bail in the FIR registered for the offence under Section 42 of the Prisons Act would not take him out of the ambit of the definition of 'hardcore prisoner' under Section 2 (aa) (iv) of the Act.

5. On the second view, viz., that unless such prisoner is convicted by a court for such offence which is punishable under Section 42/42A of the Prisons Act, 1894 as applicable to Haryana, the prisoner would not be disentitled to consideration for temporary release on parole or furlough we have the DB decision in ***Sunil @ Shilu v. State of Haryana*** (decision dated 27<sup>th</sup> September, 2016 in CRWP-1299-2015), ***Sonu @ Pradeep v. State of Haryana, 2017(3) Law Herald 2319*** (dated 28<sup>th</sup> July, 2017) and

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the decision dated 7<sup>th</sup> December, 2017 in *Gurdeep Singh v. State of Haryana 2018 (4) PLR 77*. Clearly, therefore, there is conflict of decisions of Coordinate Benches.

6. This Court is conscious that in view of the settled legal position, as recently explained by the Supreme Court in *Dr. Shah Faesal v. Union of India 2020 (4) SCALE 462*, a decision rendered by the Coordinate Benches would be binding on the subsequent Benches of equal strength and if there is a conflict, the only way in which such conflict can be resolved is to refer the issue of the correctness of the contrary views of the Coordinate Benches to a larger Bench.

7. It may also be noticed here that there are number of orders of learned Single Judges relying on decisions of DBs following either of the two contrary views. In the circumstances, this Court considers it important that the law in this regard should be settled by a Full Bench of three learned Judges.

8. Accordingly, the following question is referred for decision by a larger Bench of three Judges:

“For the purposes of interpretation of the expression ‘hardcore prisoner’ under Section 2 (aa) (iv) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, is it necessary that the prisoner, who is detected using or in possession of a cell phone/SIM card inside the jail premises, should, in order to be disentitled to temporary release on parole or furlough, be convicted by a Court for the corresponding offence under Sections 42/42 A of the Prisons Act as applicable to Haryana or even if only punished by the prison authorities under Section 46 of the Prisons Act?”

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9. The papers be placed before the Hon'ble the Chief Justice for constituting an appropriate Bench.

10. A photocopy of this order be placed in the file of connected cases.

(S. MURALIDHAR)  
JUDGE

(AVNEESH JHINGAN)  
JUDGE

14<sup>th</sup> September, 2020  
*pankaj baweja*



सत्यमेव जयते

