
(2018) 10 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No.25517 of 2018

Tara Chand

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 342, 363, 366(A), 376(1), 376(2)(f)
Protection of Children from Sexual Offences Act, 2012 — Section 2(aa)(6), 4, 6, 14
Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 — Section 3(1)(d)

Citation : (2018) 10 P&H CK 0099

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Amit Khatkar, Saurabh Mohunta

Final Decision : Allowed

Judgement

The petitioner was tried in a case registered vide FIR No.51 dated 1.3.2016 registered under Sections 342, 363, 366(A), 376(1) IPC and Section 6 of

Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') at Police Station Agroha, District Hisar. The petitioner was

convicted under Section 376(2)(f) IPC and Section 4 of POCSO Act and was sentenced for 10 years imprisonment vide order of conviction and

sentence dated 26.9.2017. The petitioner has applied for parole in terms of Section 3(1)

(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') to attend the marriage of his real brother which is

now fixed for 10/11.10.2018 at his native place i.e. village Barar Khera, District Jind.

After notice, the respondents have filed reply in which the factum of marriage has been verified to be correct but it is argued that since the petitioner

has been convicted under the POCSO Act i.e. for the offence of rape of a girl who is below 16 years of age at the time of commission of offence,

therefore, he would be termed as a hardcore prisoner in terms of Section 2(aa) (6) and 14 of the POCSO Act. However, counsel for the petitioner

has submitted that provisions of Section 2(aa)(14) is not applicable because the conviction of the petitioner is not under Section 14 of the POCSO Act

but the conviction is under Section 6 of the POCSO Act.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is merit in the submission made by

the counsel for the petitioner because the Legislature has specifically provided the definition of hardcore prisoner in Section 2(aa) of the Act in which

the prisoner who has committed offence under Section 14 of the POCSO Act is to be treated as hardcore prisoner. Since the petitioner has been

convicted under Section 4 of the POCSO Act, therefore, he cannot be declared to be a hardcore prisoner.

In view thereof, the present petition is hereby allowed and the petitioner is ordered to be released on parole for a period of two weeks to attend the

marriage of his real brother on furnishing surety bonds to the satisfaction of District Magistrate, Hisar who is further directed to impose necessary

conditions in his order of release so as to ensure the return of the petitioner to the jail on completion of the period of parole.