IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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IOIN-CRWP-3259-2024 IN CRWP-3259-2024
Reserved on: 02.08.2024
Date of Pronouncement: 02.09.2024

ACHAN KUMAR -PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA
HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana
Mr. Saurabh Mago, DAG, Haryana
Mr. Karan Jindal, Asstt. A.G., Haryana
Ms. Kushaldeep Kaur, Advocate
Mr. Sakal Sikri, Advocate
Mr. Siddharth Arora, Advocate
Ms. Saanvi Singla, Advocate and
Ms. Naina Jindal, Advocate.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab with
Mr. Maninder Singh, Sr. DAG, Punjab and
Mr. Pradeep Sharma, Advocate.

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SURESHWAR THAKUR, J.

1. The instant Full Bench is constituted to answer the hereinafter formulated substantial questions of law:-

> *"(i) Whether without any conviction becoming handed over by the regular Court concerned, the mere detection of unauthorized possession of a mobile phone from the prisoner concerned, does*

disentitle him to seek the privilege of parole, especially when even in heinous offence, subject to imposition of certain exacting conditions, the regular Courts of competent jurisdiction can grant bail to the accused concerned.

(ii) Whether the procedure for awarding of punishments, as envisaged in the relevant provisions whereby conferment of jurisdiction is made upon the jail Superintendent to award punishment, is in alignment with the procedure for fair trial being made by the regular Courts of competent jurisdiction vis-a-vis the accused, inasmuch as, when the criminal Courts of competent jurisdiction make trials upon the accused, they are to ensure that the prosecutions witness are permitted to be cross-examined by the accused, through his engaging a defence counsel, besides after completion of proceedings under Section 313 Cr.P.C., they are to ensure that the accused is permitted to adduce defence evidence ? Whether as such with the Superintendent of the jail concerned making departures from the said procedures, he can be construed to make well trials as well as make the consequent thereto punishments irrespective of the same becoming judicially appraised by the Sessions Judge concerned, and, if not, the consequent beneficent effect thereto vis-a-vis the prisoner concerned.

(iii) Resultantly whether therebys the said denial of privilege of parole to the prisoner yet on the stated supra deterrence, despite the fact, that the elicited reports from the authorities concerned, do not reveal, that on his becoming released on parole, therebys, he would endanger the public peace, and, security, rather would beget conflict with principles relating to criminal jurisprudence, that till an accused is found guilty, thereupto he is presumed to be innocent?

(iv) Whether the mandate recorded by the Full Bench of this Court that, that the mere unauthorized possession of the mobile phone without his becoming convicted would disentitle the inmated prisoner to earn the privilege of parole, is correctly

founded, despite no evidence emerging qua the inmated prisoner misusing the mobile phone for any ill purpose. Strikingly also, when in the instant age of technological advancements, the accessings made by the inmated prisoner, to the available internet means, thus from/within the electronic gadgets when, thus subserve the holistic purpose of safeguarding the fundamental right of life, therebys if the said accessings yet are forbidden, whether therebys the right to life becomes truncated.

(v) Whether the possession of a mobile phone by the inmated prisoner, thus for the apposite holistic purpose(s), but subject to a regulatory mechanism becoming devised by the prison authorities, therebys there would be an advancement to the constitutional principles of right to life, as enshrined in Article 21 of the Constitution of India.

(vi) Whether the convictions, if any, as became recorded against the prisoner, accused of a jail offence, despite not becoming premised on such evidence reflecting that, he was not misusing the mobile phone for any ill-purposes, whether yet the Full Bench of this Court could proceed to declare, that therebys the prisoner becomes disentitled to claim the privilege of parole, and, as such, whether thereby the said aspect is required to be further re-considered by a Bench strength of this Court larger in size from the one, which made the judgment in Kulwant @ Monu's case (supra) ?

(vii) Whether the above extracted provisions carried in the Punjab Jail Manual, and, when on breaches thereof, becoming made at the instance of the purportedly errant prisoner, when do require, trial being entered upon him by the learned Judicial Magistrate concerned, thereupon whether prior to his becoming convicted by the learned trial Court concerned, the prisoner can be deemed to be guilty, especially when the rule of criminal jurisprudence, is that, he is presumed to be innocent, till found guilty, especially when there may not be such evidence disclosing, that he had any mens rea to commit crimes through

user of the said mobile phone ?

(viii) Whether merely in the wake of the FIR being lodged, and, no trial becoming entered into, and, no conviction becoming handed upon the prisoner concerned, whether therebys the denial of privilege of parole to the prisoner concerned, is apt or tenable, especially when the regular Courts of competent jurisdiction do grant bail to the habitual offenders concerned, but subject to imposition of exacting and rigorous conditions upon him ?

(ix) Whether the judgment delivered by the Full Bench of this Court in Vakil Raj's case (supra) when became so delivered in respect of a non-obstante clause, which has however been repealed through enactment of the Act of 2022, whereins, there is no alike thereto non-obstante clause, whether it still holds force so as to now also empower the prison authorities to deny parole in the State of Haryana, thus on the said basis.

(x) When there is no corresponding thus provision in the Punjab Jail Manual, and, in the Prisons Act, whether yet the prison authorities in the State of Punjab, can merely on the basis of the judgment delivered by the Full Bench of this Court in Vakil Raj's case (supra), which otherwise became delivered in terms of a repealed act, thus passed a declining order on the prisoner's parole application."

2. The hereinabove extracted questions of law were formulated through a verdict drawn on May 27, 2024, upon CRWP No.3259 of 2024.

BACKDROP FOR THE FORMULATION OF THE ABOVE SUBSTANTIAL QUESTIONS OF LAW FOR THE SAME BEING ANSWERED BY THE INSTANT FULL BENCH OF THIS COURT

3. In the criminal writ petition (supra), the petitioner became aggrieved from the declining order dated 06.03.2024 (Annexure P-1), as became passed by the competent authority concerned, wherebys, the petitioner's claim for parole became denied. The said denial became hinged

upon the provisions, as embodied in Section 3 of the Punjab Good Conduct Prisoners' (Temporary Release) Act, 1963 (for short 'the Act of 1963'). The said provisions become extracted hereinafter:-

> ***"Procedure for temporary release. [Sections 3,4,10(1), 10(2)(b), 10(2)(d) and 10(2)(e)].***
>
> *(1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family.*
>
> *(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the Inspector General. The Inspector General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The Distt. Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the security of State or prejudicial to the maintenance of public order.*
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> *(3) If after making such enquiry as it may deem fit, the Releasing Authority is satisfied that the prisoner is entitled to be released under the Act, the Releasing Authority may issue to the Superintendent of Jail through the Inspector-General a duly signed and sealed warrant in Form B ordering the temporary release of the prisoner, specifying therein (1) period of release, (ii) the place or places which the prisoner is allowed to visit during the period of such temporary release, and the amount for which the security bond and the surety bond shall be furnished by the prisoner in Forms C and D respectively:*
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> *Provided that the amount of the security bond and the surety bond shall not exceed twenty thousand rupees in each case.*
>
> *(4) On receipt of the release warrant the Superintendent of Jail shall*

inform the prisoner concerned and such member of the prisoner's family as the prisoner may specify in that behalf for making arrangements for execution of the security and surety bonds in Forms C and D respectively for securing the release of the prisoner. A copy of the release warrant shall also be sent by the Superintendent of Jail to the District Magistrate.

(5) On receipt of the information from the District Magistrate that the necessary bonds have been furnished, the Superintendent of Jail shall release the prisoner for such period as is specified in the release warrant.

(6) The Superintendent of Jail shall also immediately forward to the Officer-in-charge of the Police Station within whose jurisdiction the place or places to be visited by the prisoner is or are situated, a copy of the warrant and the release certificate in Form E. The Officer incharge of the Police Station shall keep a watch on the conduct and activities of the prisoner and shall submit a report relating thereto to the Superintendent of Jail who shall forward the same to the Inspector-General.

(7) The date of release as well as the date on which the prisoner surrenders himself under sub-section (1) of section 8 of the Act shall be reported by the Superintendent of Jail to the Inspector-General who will inform the Government accordingly."

4. The District Magistrate concerned, through drawing the impugned order, declined the claim for parole, as became raised by the petitioner. The said denial became harbored upon a letter bearing No.11 dated 01.01.2024, transmitted through Station House Office, Police Station City Faridkot, for initiation of legal action against the prisoner on account of his breaching the jail rules by his keeping a mobile phone with him. Nonetheless, the District Magistrate concerned also made speakings in the impugned order that, on the prisoner becoming released on parole, rather there would be no danger to the security, peace and harmony vis-a-vis the area concerned. Moreover, he also referred to the local police rather having no objection, thus

on the petitioner becoming released on parole.

5. Palpably, the impugned declining order, as made in the criminal writ petition (supra), was banked upon Section 45 of the Prisons Act, 1894 (for short 'the Prisons Act'), besides became also hinged upon Paragraph 607 of the Punjab Jail Manual, provisions' whereof become extracted hereinafter:-

> ***"Section 45 of the Prisons Act***
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> *[45]. Prison offences.-The following acts are declared to be prison-offences when committed by a prisoner:*
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> *(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;*
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> *(2) any assault or use of criminal force;*
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> *(3) the use of insulting or threatening language;*
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> *(4) immoral or indecent or disorderly behaviour;*
>
> *(5) willfully disabling himself from labour;*
>
> *(6) contumaciously refusing to work;*
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> *(7) filling, cutting, altering or removing handcuffs, fetters or bars without due authority;*
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> *(8) willful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;*
>
> *(9) willful mismanagement of work by any prisoner sentenced to rigorous imprisonment;*
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> *(10) willful damage to prison property;*
>
> *(11) tampering with or defacing history-tickets, records or documents;*
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> *(12) receiving, possessing or transferring any prohibited article;*
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> *(13) feigning illness;*
>
> *(14) wilfully bringing a false accusation against any officer or prisoner;*
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> *(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official; and*
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> *(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid."*

"Para 607 of the Punjab Jail Manual

607. Further rule defining and regulating prohibited articles. - Every article, of whatever description, shall be deemed to be a prohibited article within the meaning of section 42 and clause (12) of section 45 of the Prisons Act, in the case of -

(1) A prisoner - if introduced into or removed from any jail, or received, possessed or transferred by such prisoner, and such article has -

(a) not been issued for his personal use from jail stores or supplies, under proper authority,

(b) been so issued, if possessed or used at a time or place other than such as is authorised; or

(c) not been placed in his possession for introduction, removal or use, as the case may be, by proper authority.

(2) A jail-official - if introduced into or removed from any jail or supplied to any prisoner and such article -

(a) has not been issued or sanctioned, for his personal use by proper authority;

(b) is not an article of clothing necessary for his personal wear; or

(c) has not been placed in his possession by proper authority for introduction into or removal from the jail or for the purpose of being supplied to any prisoner;

(3) A visitor - if introduced into or removed from any jail, or supplied to any prisoner and such article -

(a) is not required for his personal use while within the jail and has not been declared by him before entering the jail, and the introduction into or removal from the jail, or possession, of which while in the jail, has not been permitted by proper authority,

(b) is introduced, with or without authority, and is not retained in his possession until he has left the jail premises;

or

(c) comes into his possession while within the jail, and is subsequently removed by him from the jail,

(4) Any other person - if introduced into or removed from any jail, or

supplied to any prisoner, whether within or without the jail."

6. Be that as it may, upon breach(es) being made to the above extracted provisions, the consequent legal consequences become prescribed in Section 42 of the Prisons Act, provisions whereof become extracted hereinafter:-

> ***"42. Penalty, for introduction or removal of prohibited articles into or from prison and communication with prisoners:-*** *Whoever, contrary to any rule under section 59 introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicate or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred rupees or to both."*

7. Obviously, it appears that, the recovery of a mobile phone, from the prisoner-petitioner, during the term of his serving the substantive sentence of imprisonment, thus in the prison concerned, thus therebys has led to**,** *prima facie* ill attraction qua him vis-a-vis the relevant provisions of the above extracted Para 607 of the Punjab Jail Manual, whereunders, there is a bar against his introducing into the jail concerned, thus the said mobile phone, especially when the same was not issued for his personal use from jail stores or supplies, under proper authority, besides when it has not been purportedly placed in his possession for his use as the case may be, by the proper authority.

8. In nutshell, the mobile phone, as became recovered from the present petitioner, during the term of his spending the prison term, has led to the cultivation against him of the above stated mandate, as carried in Para 607 of the Punjab Jail Manual, which may ultimately result in his facing the penal consequences, as spelt out in Section 42 of the Prisons Act, provisions whereof become extracted hereinabove. However, the said letter which has been stated to be working as a deterrent against the present petitioner, qua his claiming the espoused relief, rather has not resulted in an FIR becoming registered against him, nor the trial against him has opened, whereas, in terms of the said breach being made by him, thereupon within the purview of Section 42 of the Prisons Act, thus he was required to be tried by a Magistrate, and, was to be, if lawfully found guilty of the charge, as became drawn against him, to be handed down a verdict of conviction by the trial Magistrate, and, subsequently he was required to be sentenced to undergo imprisonment rather not exceeding six months or to a fine amount not exceeding Rs. 200/- or to both. Therefore, the mere detection of a mobile phone, but even without the said incident resulting in an FIR becoming registered, nor the trial in respect thereof becoming entered into by the trial Magistrate concerned, has resulted in the declining order (Anenxure P-1) becoming passed. The above prima facie for reasons to be assigned hereinafter, has a striking, and, telling effect.

9. The learned State counsel submits, that though in the Act of 1963, no provisions exist thus alike the ones, as became previously carried in the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short ‘the Act of 1988’), whereunders a hardcore prisoner became defined in Section 2(aa) of the Act of 1988, nor when alike Section 2(1)(g), whereins, a

hardcore prisoner has been defined, provision whereof occurs in the extant/freshly enacted legislation, and, to which the nomenclature, The Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (for short 'the Act of 2022') becomes assigned, rather no corresponding theretos assented to legislation becomes passed by the Punjab Legislative Assembly.

10. Nonetheless, he submits, that when the above extracted provisions, as respectively embodied in the Prisons Act, and, in Punjab Jail Manual, thus are almost synonymous to the apposite deterrence, as becomes created in the statute(s) (supra), therebys the apposite thereins created deterrence is applicable also to the instant case, and, therebys in terms thereof, the declining of relief to the present petitioner, rather is a well made declining.

> "*2(aa) "hardcore prisoner" means a person, who -*
>
> *(i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or*
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> *(ii) during any continuous period of five years has been convicted and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone imprisonment atleast for a period of twelve months: Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded. Explanation. - A conviction which has been set-aside in appeal or revision and any imprisonment undergone in connection therewith*

shall not be taken into account for the above purpose; or

(iii) has been sentenced to death penalty; or

(iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or

(v) failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act;]"

11. The relevant provisions, as carried in the Act of 1988, and, in the Act of 2022 are extracted hereinafter.

Haryana Good Conduct Prisoners (Temporary Release) Act, 1988	***Haryana Good Conduct Prisoners (Temporary Release) Act, 2022***
2(aa) "hardcore prisoner" means a person, who- ***(iv) has been detected of using cell phone or in possession of cell phone/Sim card inside the jail premises' or***	***2(1)(g) "hardcore convicted prisoner" means any prisoner-*** ***(iv) who has been found in possession or detected of using wireless communication device or its components or any unauthorized electronic device inside the jail premises; or***
'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:* *Provided that a hardcore prisoner 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*	***Section 6-Temporary Release of a convicted prisoner on custody parole and special provisions for hardcore convicted prisoners*** *(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 police 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*

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) 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 co been awarded any major punishment by the Superintendent of jail, as judicially appraised by the concerned District and Sessions Judge:* *Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:* *Provided further that if the of prisoner so released under this sub- section violates any condition of temporary release or furlough, he shall be debarred*	*convicted prisoner who District 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 orcommits any cognizable offence, he shall be debarred from such release for next three years.* *(4) Convicted prisoner including hardcore convicted prisoner may be granted custody parole without taking into account his period of completion of sentence for attending funeral of his family member or marriage of his children or siblings.*

12. Consequently, he argues, that when in the said non-obstante clause, it is mandated, that a convicted hardcore prisoner, who has not been awarded death penalty or life imprisonment till natural life, would be entitled for emergency parole or regular parole or furlough, yet only if he has completed five years of his imprisonment but subject to a further condition that he is not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.

13. Therefore, the learned State counsel submits, that in view of the

provisions (supra), but alike the supra are also enclosed in the Punjab Jail Manual, and in respect whereof a punishment is prescribed in the Prisons Act, therebys, when the said provisions are almost synonymous to the above extracted provisions, as respectively define the "hardcore prisoner" both in the repealed Act of 1988, and, in the Act of 2022. Moreover, when with the occurrence of the apposite non-obstante clause, thus in Section 5-A of the Act of 1988, rather a bar becomes created against the release of a hardcore criminal on parole, as the present applicant is, thus upon his committing the jail offence concerned. Therefore, he argues, that when the intent of Punjab Jail Manual, thus is similar to the intent of the above assented to statutes, as become enacted by the Haryana State Legislative Assembly. Consequently, he submits, that when the Full Bench of this Court in ***CRWP-1890-2020***, titled as ***Kulwant alias Monu versus State of Haryana and others,*** while answering the hereinafter extracted reference, ultimately upheld the decision made by a Division Bench of this Court, in case titled as ***Vakil Raj versus State of Haryana and others*** reported in ***2016(2) RCR (Criminal) 1040,*** and, disagreed with the verdict recorded by this Court in ***CRWP-1374-2017***, titled as ***Gurdeep Singh versus State of Haryana and others***.

> *"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 42/42A of the Prisons Act as applicable to Haryana or even if only punished by the prison authorities under section 46 of the Prisons Act?"*

14. In sequel, he further contends, that since in the judgment made by

the Full Bench of this Court in *Kulwant @ Monu*'s case (supra), thus the thereunders issue for consideration, relates to an issue alike the one, as is existing in the instant case, and, as appertains to whether the mere detection of a mobile phone, even without any conviction in respect thereof becoming recorded, upon the convict-prisoner, thus would result in denial of parole to him. Therefore, he submits, that with the verdict rendered by the Full Bench of this Court, thus declaring that the mere detection of a mobile phone from an incarcerated prisoner rather disentitling him to claim the relief of parole, but is required to be assigned the fullest clout and sway, and, therebys the instant petition is required to be dismissed.

15. Initially, it is required to be stated, that a Division Bench of this Court, which delivered verdict in *Gurdeep Singh*'s case (supra), thus was dealing with the issue relating to denial of parole to a hardcore prisoner, as defined in the repealed Act of 1988, with thereins occurring a non-obstante clause, wherebys on the mere detection of a mobile phone from the prisoner concerned, during the tenure of his spending incarceration in the prison concerned, thus the privilege of parole became denied to him. On the said conundrum the hereafter extracted speakings were made in para 3 thereof, para whereof becomes extracted hereinafter.

> *"We have heard learned counsel for the parties and gone through the record. While this Court, in no uncertain terms, holds that the jail inmates cannot be allowed to keep mobile phones or such other gadgets etc. which are oftenly used to commit professional crimes like demand of ransom, kidnapping etc.etc.. Nevertheless, it is an integral part of the jail reforms that the inmates should be provided with telephone facilities to connect themselves with their family, nears and dears. Such a facility can be made available by the jail authorities through a land line number(s). In this backdrop, it is difficult to accept*

> *that the mere recovery of mobile phone from an inmate against whom there is not even a whisper that he ever misused the phone either to blackmail some one or for demanding ransom or he involved himself in any other nature of crime, would be sufficient to categorise him as a 'hardcore' prisoner. It is only in a case where the inmate is found to have misused the mobile facility for committing another crime while inside the jail, that he should be put into the category of 'hardcore criminals' and be deprived of his statutory right of parole. The petitioner, in the absence of any such allegation, does not fall in that exceptional category. We, thus, set aside the objection raised by the respondents and direct the Competent Authority to consider the case of the petitioner for his release on agricultural parole. The appropriate order shall be passed within one week from the date of receipt of a certified copy of this order."*

16. However, the Division Bench of this Court in *Vakil Raj*'s case (supra), contrarily rather, in para 17 thereof, para whereof becomes extracted hereinafter, but while upholding the constitutional vires of the above extracted provisions, carried in the repealed Act of 1988, ultimately concluded, that the convict, who does not maintain jail discipline, thus thereby, he becomes disentitled to parole, as one of the conditions qua grant of parole, thus is good behaviour hence even in custody, and, that though the mobile is a facility for use of citizens, but such a right is not inherent in the prisoner. In consequence, merely, upon the Jail Superintendent concerned or the staff of the prison concerned, detecting that the prisoner concerned, is unauthorizedly keeping a mobile phone with him, thus would lead to the ill-consequence of his therebys, even without his becoming convicted, rather forfeiting the privilege of his being released on parole.

> *"Thus, a convict, who does not maintain jail discipline, is not entitled to parole as one of the conditions of grant of parole is good behavior in custody. Though mobile is a facility for use of citizens, but such right is not with the prisoner. The personal rights of a convict stand*

> *suspended including the right of free movement. Therefore, imposing a condition that use of mobile, which has the potential of misuse, will disentitle a convict for grant of parole, cannot be said to be unjustified, as it is a requirement introduced for maintaining discipline and a good behavior in jail."*

17. Obviously the said view propounded in *Vakil Raj*'s case (supra), is contrary to the view propounded in *Gurdeep Singh*'s case (supra). In the above extracted paragraph, carried in *Gurdeep Singh*'s case (supra), it became propounded, that the mere recovery of mobile phone from the jail inmate against whom there is not even a whisper that, he ever misused the phone either to blackmail someone or for demanding ransom or his indulging in any other nature of crime, would not be sufficient to categorise him as a hardcore prisoner. It is also stated in *Gurdeep Singh*'s case (supra) that, only in case where the jail inmate is found to have misused the mobile facility to commit the crime while inside the jail, that thereupon alone, thus he should be put into the category of hardcore criminals, and, therebys he would become deprived of his statutory right of parole.

REASONS FOR ANSWERING THE ABOVE FORMULATED SUBSTANTIAL QUESTIONS OF LAW AGAINST THE STATE OF HARYANA, AND, ALSO AGAINST THE STATE OF PUNJAB. FURTHERMORE, FOR THE REASONS TO BE ADVANCED HEREINAFTER, THIS FULL BENCH UPHOLDS THE VERDICT RENDERED BY THIS COURT IN GURDEEP SINGH'S CASE (SUPRA) AND DECLARES THE APPOSITE PROVISIONS AS ULTRA VIRES ARTICLE 21 OF THE CONSTITUTION OF INDIA. IN SEQUEL, THE VERDICT PRONOUNCED BY THE FULL BENCH OF THIS COURT IN KULWANT @ MONU'S CASE (SUPRA), WHEREBY, CONSTITUTIONALITY OF THE IMPUGNED THEREIN PROVISION(S) BECAME UPHELD, THUS IS MOST RESPECTFULLY DIS-AGREED WITH.

18. At the threshold itself, though assuming that the claim for parole is a mere privilege, and, is not any conferment of any indefeasible right, upon the prisoner concerned. Moreover, even though the maintainings of good conduct, and, also the maintainings of prison discipline, but is a valid paramount parameter, thus for the prisoner earning the privilege of parole. However, since the robust principle of criminal jurisprudence, but encapsulates the trite rubric, that an accused/prisoner is presumed to be innocent unless pronounced guilty. Resultantly, to the considered mind of this Court, the said principle is necessarily required to be applied also in the event of makings denials of the privilege of parole to the prisoner concerned, thus merely founded upon a mobile phone becoming recovered from his possession, and, that too when neither any trial becomes entered against him, nor any punishment becomes awarded to him. Any denial of parole to the prisoner, founded upon thus breaches being caused to the fine rubric (supra) hence inhering criminal jurisprudence, but would be a misfounded premise.

19. Moreover, the further reason for this Court respectfully dis-agreeing with the verdict rendered by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** wherebys, the constitutional validity of the impugned therein provision(s) became upheld, to the considered mind of this Full Bench, becomes well rested on the hereinafter premises.

20. That in case the vires of the said provision(s) becomes upheld, thereupon the reports made in favour of the inmated prisoner that, on his being released on parole, there would be no danger to the peace, and, security appertaining to the area concerned, rather would suffer inapt erosion, wherebys, but as a consequent sequel thereto, there will be an untenable

fettering vis-a-vis the limited liberty endowed upon the inmated prisoner vis-a-vis the espoused claim for parole, despite the said claim becoming well founded upon worthy reasons. Moreover, therebys, despite good, valid and tangible reasons ingraining the apposite parole application, and, which become also supported by reports from all agencies concerned, but would remain unsubserved leading to gross injustice becoming perpetrated upon the prisoner.

21. Since even upon commission of heinous crimes, thereupons, yet upon imposition of certain exacting conditions, thus the accused concerned do become granted indulgence of bail by the courts of competent jurisdiction. Resultantly, if the inmated prisoner rather becomes denied the espoused relief, on his application for parole and the said declining order is founded merely on his being found to be possessing a mobile phone by the jail staff. Moreover, if even after his ultimately becoming convicted for his committing the said errant conduct, during his spending the term of imprisonment in the prison concerned, thereupons, when in alteration to the imposition of a substantive sentence of imprisonment extending to a term not exceeding six months, he may be sentenced only to a fine amount not exceeding two hundred rupees. Resultantly, the granting of indulgence of bail to an accused, who allegedly commit heinous offences, whereas, there being denial of parole to an inmated prisoner, but, only on the ground of his being found in possession of a mobile phone in the prison concerned, in respect whereof, in terms of Section 42 of the Prisons Act, thus in substitution of awarding to him the substantive sentence of imprisonment extending upto six months, but rather the sentence of fine comprising a sum of two hundred rupees is imposable, thus does beget,

the apt inference that, therebys the said denial appears to be extremely oppressive and harsh.

22. Conspicuously also, when in the instant case, a reading of the declining order manifests that, after the registration of the FIR, no full trial has been entered upon by the criminal court of competent jurisdiction, nor a verdict of conviction has been recorded. Contrarily when the District Magistrate concerned has also reported that, the local police agency making speakings in the apposite reference that, in case, the inmated prisoner is released on parole from the prison concerned, thereupon, there would be no danger to the peace and security of the area, where he would be living on his becoming released on parole. In sequel, the prematurely formed reason (supra), thus for denying parole to the inmated prisoner, but also appears to be founded upon a further ill presumptive reason that, upon his facing trial, he would necessarily be convicted and subsequently he would become sentenced either to face the substantive sentence of imprisonment not exceeding six months, or, his facing the sentence of fine not exceeding two hundred rupees. Therefore, the above ill presumptively formed conclusion is but ill-informed. Resultantly, therebys the mere possession of a mobile phone by the inmated prisoner, cannot attract against him the rigor of the mandate recorded by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** as therebys, for reason (supra), and, for further reasons assigned hereinafter, the same is antithetical to the norm (supra) embedded in criminal jurisprudence, besides also causes breach vis-a-vis the mandate of fair trial, as envisaged in Article 21 of the Constitution of India.

23. Moreover, even if, in terms of the provision (supra), as carried

respectively in the Punjab Jail Manual, and, in the Prisons Act, though there may be a purported valid deterrence against the inmated prisoner to claim the indulgence of parole, or, his therebys forfeiting his claim for his application for parole being allowed. Necessarily so, when the conduct in prison of the inmated prisoner is the *prima donna* reason rather for the prisoner well earning the espoused privilege. Imperatively, the said deterrence though is purportedly founded upon the provisions (supra) carried in the Punjab Jail Manual, and, also become purportedly founded upon the provisions (supra) carried in the Prisons Act. However, a reading of the said provision(s) reveals that, the said deterrence created against the claimings of parole by the inmated prisoner, but does not find any mentionings thereins, i.e. the statute (supra). Contrarily, it appears that, yet on the basis of the judgment rendered by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** wherebys, the constitutional validity of the impugned therein provision(s) became upheld, provisions whereof, as occur in the Act of 1988, thus defined "hardcore prisoner", besides therebys also becoming upheld, thus the constitutional vires of the non-obstante clause occurring in Section 5-A of the Act of 1988. Since, obviously the said provisions are applicable only to the prisoners inmated in the prisons located within the territorial jurisdiction of Haryana, besides apply to those prisoners, who face trial before the courts of law located within the jurisdictional limits of the State of Haryana, whereas, the inmated prisoner herein, is suffering incarceration in a prison located in the State of Punjab, besides is also suffering incarceration thereins rather only after his becoming tried and convicted by a criminal court of competent jurisdiction located within the territorial limits of the State of Punjab. Resultantly, therebys the

attraction of the repealed non-obstante clause occurring in the repealed Act of 1988, besides the attraction of the verdict recorded by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** rather against the present petitioner, but obviously is an ill-attraction thereofs against him.

24. Be that as it may, since this Court is yet required to be answering the reference relating to the correctness of the respective contra postures taken by the Division Bench of this Court in ***Gurdeep Singh's case (supra)***, and, by the Full Bench of this Court in ***Kulwant @ Monu's case (supra).*** Consequently, since in ***Gurdeep Singh's case (supra)***, the Division Bench of this Court found disfavour with the declining order passed on the inmated prisoner's application for parole. Moreover, when the declining order, as became quashed by the Division Bench of this Court in ***Gurdeep Singh's case (supra),*** became declared to become ill-founded, on a mis-premise that, the mere possession of a mobile phone with the inmated prisoner, without further proof that the said being used for committing any offence, wherebys the competent authority became ill equipped to make a declining order on the inmated prisoner's application for his being released on parole from the prison concerned. On the other hand, the Full Bench of this Court, while upholding the relevant impugned therein provision(s) to be constitutionally valid, founded the said conclusion, on the premise that, the claim for parole is not an indefeasible right vesting in the inmated prisoner, but, it depends upon his good conduct while his being inmated in prison, as thereupons he earns the stated therein privilege of parole.

25. However, the declaration of law made by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** not only on ground(s) (supra), but

also on the further grounds, as alluded to hereinafter, most respectfully suffers from grave fault lines. Initially, even if an inmated prisoner is, in terms of the repealed Act of 1988, hence during his spending the term of incarceration in the prison concerned, thus found to be unauthorizedly holding possession of a mobile phone, yet therebys, to the objective consideration of this Court, he does not forfeit his right to earn a favourable order on his application for parole.

26. The unauthorized possession of a mobile phone by the inmated prisoner, when yet no valid proof has generated qua his misusing the mobile phone for committing heinous offences, thereupons his merely unauthorizedly holding possession of a mobile phone, but necessarily imposes a restriction against his availing the privilege of parole. Resultantly, therebys a further oppressive ill-casuality ensues rather qua the apposite emergent and statutory purposes, wherebys, he is well led to ask for parole, and/or, therebys even his well founded claim for parole becoming untenably baulked. Therefore, therebys the limited liberty of parole becomes the ill-casuality upon attraction against the inmated prisoner, vis-a-vis, the pronouncement made by the Full Bench of this Court in ***Kulwant @ Monu's case (supra)***.

27. The further reason for declaring the said restriction against availment of parole by the inmated prisoner, thus being oppressive, besides being an exacting condition, ensues from therebys rather gross and blatant transgression being caused to the cardinal norm of criminal jurisprudence, as is rigorously applied in India, inasmuch as, till an accused is declared guilty, through a verdict becoming passed by the court of competent jurisdiction, thus thereupto rather he is presumed to be innocent.

28. The said principle is to be throughout, besides omnibusly required to be declared to be holding operation qua even an inmated prisoner. In case, the impugned legislation chooses to not apply the said cardinal norm of criminal jurisprudence, vis-a-vis, an inmated prisoner, thereupon the said ouster qua operation of the cardinal norm (supra), vis-a-vis, an inmated prisoner, but would create an unreasonable classification against inmated prisoners, who merely unauthorizedly possess mobile phones, during theirs spending imprisonment terms in the prisons concerned.

29. In other words, the non application of the cardinal norm (supra) qua the category of inmated prisoners (supra), thus to the objective and considered mind of this Court, is both unreasonable as well as arbitrary. Resultantly, therebys there is violation of the constitutional norm appertaining not only to equality, but also qua the constitutional norm of fair trial, as contemplated in Article 21 of the Constitution of India. The constitutional principle of fair trial is guaranteed through the procedure relating to the trial of accused, as contemplated earlier in the Code of Criminal Procedure, and, now in the replaced thereto Bharatiya Nagarik Suraksha Sanhita, thus becoming rigorously adhered to. The salient norm for a fair trial is not only qua an accused being presumed to be innocent, till he becomes convicted by the court of competent jurisdiction, but also extends to, upon a charge becoming framed against an accused, thereupon, his being required to be asked to either plead guilty to the charge, or, being asked to plead not guilty to the charge, so that in the latter event, the trial against him lawfully commences. Moreover, subsequently in the event of the accused pleading not guilty to the charge, thus for proving the charge, the prosecution is required to be ensuring that the

prosecution witnesses concerned, thus step into the witness box for theirs making their testifications in their respective examination-in-chief, but yet subsequent thereto, the accused has to be assigned the fullest opportunity to make an efficacious cross-examination upon the prosecution witnesses concerned, through the latter engaging a defence counsel. Moreover, thereafters on completion of the proceedings under Section 313 Cr.P.C., the accused is required to be granted an opportunity to adduce defence evidence.

30. All the above stated norms relating to the conducting of a fair trial against an accused, are the cornerstone of the principle of fair trial, quartered within the domain of Article 21 of the Constitution of India. Resultantly, the said constitutional norm, but cannot be breached, even in respect of a prisoner, who, during the term of his becoming inmated in the prison concerned, thus unauthorizedly possesses a mobile phone, whereupon, he is led to, in terms of the declaration of law, rather forfeit his espousal for his application of parole being allowed.

31. An enhanced vigour to the inference (supra) becomes garnered from the factum that, even for clinchingly resting the charge drawn against an accused allegedly, consciously and exclusively possessing a prohibited narcotics substance or psychotropic substance, as contemplated in the N.D.P.S. Act, thereupon the making of an incriminatory report by the Chemical Examiner is but a dire necessity. Therefore, the said dire necessity is even to be applied to an inmated prisoner, who unauthorizedly possesses a mobile phone in the prison concerned, whereas, the dispensings with the said dire necessity, through the impugned provisions, but also creates not only an invidious discrimination against the inmated prisoners, but, also causes blatant

breach to the jurisprudential norm (supra).

32. The compliance qua the dire necessity (supra), in respect of the inmated prisoners, who allegedly unauthorizedly possess mobile phones, may become comprised only on evidence of a service provider becoming adduced and the same reflecting that the SIM numbers detailed therein, being owned by hardcore gangsters or blackmailers. Consequently, the impugned provisions, without the imperative evidence (supra) becoming permitted to become adduced, thus merely through unauthorized possession of a mobile phone by an inmated prisoner, rather necessarily *per se* therebys drawing incriminations against the inmated prisoners concerned, but are antithetical to the norms of fair trial.

33. Though the non-obstante clause (supra) makes the punishment awarded by the Jail Superintendent vis-a-vis the jail offence concerned, to become clothed with an aura of legitimacy, rather through speakings occurring thereins that the same became judicially appraised. Nonetheless, to the objective contemplation of this Court, the said made affirmative judicial appraisals, vis-a-vis, the awardings of sentence by the Jail Superintendent qua the apposite jail offence, but rather is merely chimeric or is a charade. In other words, it is merely illusory. Furthermore, it is completely antithetical to the above norms relating to the fair trial of an accused by the criminal court of competent jurisdiction, through rigorous adherences being made to the relevant provisions encapsulated earlier in the Code of Criminal Procedure, in the Indian Evidence Act, and, now in the respectively replaced theretos Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam. The rigorous adoptions of the said procedure, even in respect of trial, as becomes

entered into by the Jail Superintendent vis-a-vis the jail offence concerned, is but a dire constitutional necessity, as the said procedural norms become well planked upon the salutary principle of fair trial, as becomes encapsulated in Article 21 of the Constitution of India. Any departures therefrom would fatally strike at the constitutional vires of the relevant provisions, which however became upheld by the Full Bench. Therefore, this Court finds itself in respectful disagreement qua the upholding of the constitutional validity vis-a-vis the impugned provision(s), through the makings of a judgment by the Full Bench of this Court in ***Kulwant @ Monu's case (supra)***.

34. Reiteratedly, the above extracted procedural safeguards, as encapsulated in the relevant statutory provisions, against the accused being arbitrarily tried, but appear to be put in the back burner in the impugned legislation. The reason for making the said inference becomes deeply entrenched upon making appraisal of the non obstante clause, as carried in the repealed Act of 1988, which though does authorize the Superintendent of the Jail concerned, to impose punishments, and, though there appears to be some safeguard against any errors seeping into the said awarding of punishment by the Jail Superintendent concerned vis-a-vis the prisoner concerned, through the apposite punishment becoming judicially appraised by the District and Sessions Judge concerned. However, yet for reasons assigned hereinafter, despite adherences being made to the said provisions, yet the constitutional principle of fair trial, as envisaged in the above made references to the relevant statutory provisions, rather does not get furthered. The striking reason for making the said conclusion becomes sparked from the factum that, the underpinnings of the constitutional principle of fair trial, is qua the fullest

opportunity becoming afforded to the accused, to engage a defence counsel, for making cross-examinations upon the prosecution witnesses, besides is grooved in the further requirement of the accused becoming permitted to adduce defence evidence. However, the said principles appear to be put in the back burner, through the above mandate(s) becoming enclosed in the said non-obstante clause, besides also when no rules in consonance with the norm (supra) relating to a fair trial being made vis-a-vis the accused, rather become formulated in the relevant legislation.

35. Reiteratedly, therebys the said principle however appears to become sidestepped through the making of the apposite legislation, impugned whereins provisions became declared to be constitutionally valid by the Full Bench of this Court, through the makings of a decision in ***Kulwant @ Monu's case (supra).*** Therefore, when obviously the constitutional principle of fair trial, but for reasons assigned hereinafter, becomes completely whittled down or becomes truncated. In sequel, the overlookings of the said trite constitutional principle by the Full Bench of this Court while delivering the verdict in ***Kulwant @ Monu's case (supra),*** whereby, it declared constitutionally valid, thus the provision(s) relating to an inmated prisoner becoming deprived of his earning the privilege of parole, merely on his becoming found to be in unauthorized possession of mobile phone itself, even without a trial being held, nor his becoming convicted in the manner envisaged in the provisions carried in Section 42 of the Prisons Act, nor in the manner envisaged in the non-obstante clause (supra), thus has reiteratedly resulted in the decision (supra) rendered by the Full Bench of this Court, being respectfully outside the contours of the principle of fair trial, as contemplated in Article 21 of the Constitution of India.

36. Be that as it may, for the judicial conscience of this Court becoming satisfied, qua whether the judicial appraisal, as made by the District and Sessions Judge concerned, vis-a-vis, the punishment(s) awarded by the Superintendent of Jail concerned, qua the errant conduct of the inmated prisoner, rather is closely analogous or almost synonymous to the hearings made upon appeals raised by the aggrieved convicts, thus before the courts exercising appellate jurisdiction, rather had asked the learned amicus curiae to place on record the relevant judicial appraisals, as became made by the District and Sessions Judges concerned. A reading of the files placed on record, however, does not disclose that, either the evidence as became adduced before the Superintendent of Jail concerned, in respect of the errant conduct of the inmated prisoner, became tested on the touchstone that, the same was well appreciated but after affording an opportunity to the accused to cross-examine the witnesses concerned, who supported the allegation, besides does not also make any upsurgings, thus with graphic speakings that, there was an examination of the contents of mobile phone by an expert, who subsequently declared that the seized mobile phone from the inmated prisoner but containing incriminatory material, wherebys it may be formidably declared that he was misusing the mobile phone, as became unauthorizedly held by him, during the term of his spending incarceration in the prison concerned. The omission (supra) in the said made judicial appraisals, rather thus, as stated (supra), hence merely create an illusion vis-a-vis the punishments awarded by the Jail Superintendent vis-a-vis the inmated prisoner, thus therebys becoming clothed with an aura of solemnity. The makings of judicial appraisals, as exist on the files, but however accelerates,

besides provides fortified bolsterings, to the above made conclusion that, the said judicial appraisals are not co-equal to a just and fair trial being entered vis-a-vis an accused by the regular court of competent jurisdiction, nor therebys they endow any aura of legitimacy to the punishments awarded by the Jail Superintendent. Contrarily, the relevant impugned provisions conflict with the principle of fair trial, as become envisaged in the relevant (supra) regulatory statutory procedural norms, which are in terms of the principle of fair trial contemplated in Article 21 of the Constitution of India.

37. Even if assuming that, the mere unauthorized possession of a mobile phone by the inmated prisoner is a misconduct, but yet when only after the makings of frisking of the prisoner concerned, that the latter is lodged in a cell in the prison concerned. Therefore, when after his frisking takes place, thus he enters the cell allocated to him in the prison concerned, thereupons unless there is omission of performance of duty by the jail staff in the making of friskings upon the prisoner, thereupon, the prisoner would not be led to take along with him, to the cell allocated to him in the prison concerned, any mobile phone, so that therefroms he communicates either with his friends or relatives. In other words, thus only with the active complicity of the jail staff, the inmated prisoner would purportedly hold unauthorized possession of a mobile phone. In sequel, the jail staff concerned shares vicarious inculpability with the inmated prisoner. However, the repealed statute concerned, rather completely fails to contain any provisions for yet drawing any vicarious inculpability against the jail staff, who, but for reasons (supra), are complicit with the inmated prisoner in the latter being led to take a mobile phone onto the cell, which becomes allocated to him in the prison concerned.

38. Therefore, with the apposite impugned legislation concerned rather failing to assign vicarious inculpability vis-a-vis the jail staff, thus therebys makes the legislation concerned to be both arbitrary and exacting only vis-a-vis the inmated prisoner. Resultantly, therebys too, the said exclusion from inculpability, but of the jail staff, enhances the vigour of the conclusion (supra) that, as such the impugned legislation is arbitrary and unreasonable only vis-a-vis the inmated prisoner.

39. Now, even if assuming that the said repealed statute thus has a holistic purpose of ensuring that the inmated prisoner does not carry the mobile phone on to the allocated cell to him. Therefore, the imminent salutary purpose underpinning the said provision is to preclude the prisoner from committing heinous offences, through his making users of mobile phone. Necessarily therebys, thus the mere unauthorized possession of the mobile phone, may not become the *prima donna* or the imperative parameter for the relevant ouster being created against the prisoner. Contrarily, the paramount parameter for depriving the inmated prisoner against his earning the privilege of parole, rather becomes anchored upon the necessity of adduction of evidence qua the unauthorizedly possessed mobile phone, but becoming proven to become evidently used by the inmated prisoner for commission of heinous offence. Therefore, even in respect of unmindfulness becoming shown to the paramount parameter (supra), thus therebys also but a flawed inculpability appears to be drawn against an inmated prisoner, banked upon his merely unauthorizedly possessing a mobile phone, and that too, without further proof (supra) being adduced vis-a-vis its misuser by him. Resultantly, therebys an ultra oppressive and exacting condition becomes created against

an inmated prisoner earning the privilege of parole.

40. In sequel, the verdict pronounced by the Full Bench of this Court in ***Kulwant @ Monu's case (supra),*** while declaring constitutionally valid the impugned therein provision(s), but respectfully cannot become concurred with by this Court. On the other hand, this Court respectfully concurs with the reasons (supra) set forth by the Division Bench of this Court in ***Gurdeep Singh's case (supra)***, in the making of a conclusion therein that, there being an imperative requirement qua adduction of evidence that the inmated prisoner, irrespective of his unauthorizedly possessing a mobile phone, but provenly misusing the same thus to make ransom or extortionate calls. The said exposition of law is respectfully completely within the ambit of the principle of fair trial contemplated in Article 21 of the Constitution of India.

41. As stated (supra), when even in terms of the apposite provisions encapsulated earlier in Section 389 of the Code of Criminal Procedure, and, now in Section 430 of Bhartiya Nagarik Suraksha Sanhita, therebys the prisoner, who becomes convicted even for heinous offences, becomes endowed with a statutory right to claim an order for suspending the execution of sentence of imprisonment imposed upon him. Moreover, when affirmative orders do also become passed on such applications. Surprisingly however, when in the event of the inmated prisoner, thus merely unauthorizedly possessing a mobile phone, and, without any fair trial being entered upon him, nor his becoming convicted, nor also when the judicial appraisal made of the awardings of punishment upon him, for reason(s) (supra), rather is not a well made judicial appraisal, thus in terms of the procedures engrafted earlier in the Code of Criminal Procedure, and, now in the replaced thereto Bharatiya

Nagarik Suraksha Sanhita, rather becomes ill led to forfeit his espousal for parole being granted to him. Moreover, when the makings of any orders, thus suspending the execution of sentence of imprisonment imposed upon a convict, is almost synonymous to the endowment of the privilege of parole to the incarcerated prisoner, but when despite the said inter se synonymity, yet on the above misfounded premise, the inmated prisoner is denied the privilege of parole. Resultantly, therebys too, the said denial anvilled upon the misfounded premise (supra) is obviously both extremely harsh and oppressive. In sequel, the apposite ex facie harshness and oppressive of the impugned legislation, when thus emerges to the forefront, but with all its ill cascading effects upon the inmated prisoner, therefore, with the Full Bench of this Court in ***Kulwant @ Monu's case (supra)*** yet upholding the constitutionality of the said but oppressive provision, does firmly coaxes this Court to respectfully dis-concur with the said decision.

42. Furthermore, the application of the said principle by the State of Punjab is a misapplication thereof to the prisoners inmated in the prisons located within the State of Punjab. Moreover, even if inmated prisoners in the State of Punjab are convicted in terms of Section 42 of the Prisons Act, but when there is no further evidence, thus adduced before the learned Magistrate concerned, rather demonstrative that the mobile phone was used by the inmated prisoner for committing offences of extortion, or, his demanding ransom. Resultantly, therebys the said ill made convictions but obviously suffer from pervasive fault lines, especially when therebys the said ill made verdicts of conviction are well appealable before the learned appellate courts concerned. Therefore, awaiting the decision on the apposite appeal, it may not

be proper for the competent authority to, yet on the premise of the appealed against verdict of conviction, reject an inmated prisoner's claim for parole. Paramountly also, when the reporting agency communicates to the District Magistrate that, in the event of release of the inmated prisoner, there would be no danger to the peace and security of the area concerned, whereupons, the apposite rejections but are untenably created restrictions or fetters rather upon the otherwise well claimed privilege of parole by the inmated prisoner.

43. Furthermore, this Court is also required to be endowing to the prisoners concerned, so that they are not led to, during theirs spending the respective terms of incarcerations in the prisons concerned, thus possess any incriminatory article, rather facilities wherebys they can communicate with their friends and relatives. The said endowment would ensue, in case directions are passed upon the Home Secretaries respectively of the State of Haryana, and, also of the State of Punjab, to forthwith install STD facilities in the jails concerned, so that therebys the inmated prisoners can communicate with their friends and relatives, but, on payment of relevant charges.

44. It would also not be out of context to delineate upon the frivolity of reasons, as occur in the declining orders, as become passed by the competent authority(ies) upon the applications filed by the inmated prisoners, wherebys, they seek theirs becoming endowed the privilege of parole. The said reasons are either stereotyped, or, are not well-informed reasons, nor they are banked upon any concrete tangible evidence displaying that, in the event of the inmated prisoner becoming released on parole from the prison concerned, therebys there would be an evident imminent threat to the peace and security of the area concerned. The said idly made orders are but

perfunctorily passed orders, besides are based on equally perfunctorily made reports by the police agencies concerned, or, by the local Panchayat concerned, all whereof but necessarily display gross non application of mind by the competent authority(ies) but in the passings of decisions upon the parole applications. Contrarily, the competent authority(ies) is required to be making a sombre and objective application of mind to the parole applications, keeping in view the liberty of an inmated prisoner. Though the espoused liberty may be severely cramped rather for a limited duration of time, yet it has, only on account of complete non application of mind by the authority(ies) concerned, thus led to a spate of litigations, with concomitant harassment being caused to the inmated prisoners. Moreover, therebys even the well purposes, whereons, the application for parole become made, do also become defeated.

45. Consequently, the District Magistrates/competent authority concerned are directed to hereinafter ensure that, they shall consider and apply their mind objectively to the relevant material furnished by the police, local Panchayats and only in cases where they receive cogent, tangible and concrete evidence indicating that the inmated prisoner, if released on parole, would be an imminent threat to the security and peace of the area concerned, thus thereupon they may well consider to, on good reasons, reject his/her application for parole. The parole is not to be denied in a mechanical manner, without application of mind. In the event of the competent authorities not objectively applying their mind vis-a-vis cases for release of prisoners on parole, thereupon they would be liable for censure/disciplinary action for theirs prompting frivolous and avoidable litigation.

46. The references are accordingly answered.

47. Disposed of accordingly.

48. A copy of this order be forthwith sent to the Chief Secretaries respectively of the State of Haryana, and, also of the State of Punjab, for information and compliance.

49. Hereinafter the compliance reports be furnished before the Roster Bench(es) concerned.

(SURESHWAR THAKUR)
JUDGE

(DEEPAK SIBAL)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

02.09.2024
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No