

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.1036 of 2015

Date of decision: July 15, 2015.

Sant Singh

... **Petitioner**

v.

State of Haryana

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Shri Sandeep Arora, Advocate, for the petitioner.

Shri Chetan Sharma, Assistant Advocate General, Haryana
for the respondent.

Darshan Singh, J. (Oral):

Present criminal writ petition has been filed by petitioner Sant Singh for grant of emergency parole to the petitioner under Sections 3 and 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the Act) for a period of two weeks on account of the death of his daughter-in-law Sinderjit Kaur, wife of Harbans Singh, in order to attend her last rites and ceremonies.

The petitioner was convicted for the offence punishable under Section 304-A IPC and is undergoing the sentence of one year at District Jail, Kurukshetra after the dismissal of his appeal against conviction as well as revision by this Court; that the daughter-in-law of the petitioner, namely, Sinderjit Kaur had expired on 10th July, 2015 at village Haibatpur. Copy of the death certificate (Annexure P-2) is attached herewith. That on the death

of Sinderjit Kaur, the Gram Panchayat of village Haibatpur had made a representation to the Superintendent, District Jail, Kurukshetra for grant of parole but the Deputy Superintendent, District Jail, Kurukshetra dismissed the application by observing that the petitioner is not entitled to parole as per Section 4 sub-section (2) of the Parole Act, 2007 (which should be the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, and are hereinafter referred to as the Rules), as he was sentenced to imprisonment less than four years. It is further pleaded that in view of the urgency, the petitioner has approached this Court for seeking the redressal of his grievance and may be granted two weeks' parole on account of the death of his daughter-in-law.

The notice of this petition was issued to the respondent-State of Haryana.

I have heard learned Counsel for the parties.

Learned Counsel for the petitioner pleaded that as per Section 3 (1)(a) of the Act, the petitioner is entitled for grant of parole for two weeks on account of the death of his family member. He contended that Rule 4 sub-rule (2) of the Rules cannot over-ride the substantive Act and the concession of emergency parole cannot be declined to him simply on the ground that he has been sentenced for imprisonment for less than four year. He further contended that it is highly discriminatory that this type of concession is admissible to a hardcore prisoner under Section 5A of the Act but is being denied to the present petitioner who has simply been convicted for an accident case. Learned Counsel for the petitioner further stated that the last rites and ceremonies of the deceased are fixed for 19.7.2015.

On the other hand, learned Counsel for the State pleaded that as per Rule 4 sub-rule (2) of the Rules, the parole can only be awarded if a person has been sentenced to imprisonment for four years or more. Section 5A of the Act is not applicable to the case of the petitioner. So, there is no legal infirmity in the order passed by the Deputy Superintendent, District Jail, Kurukshetra.

I have duly considered the aforesaid contentions. Section 3(1) (a) of the Act provides that temporary release of the prisoner is permissible in case of the death of the family member of the prisoner. In the instant case, this fact is not disputed that Sinderjit Kaur, the daughter-in-law of the present petitioner has died on 10th July, 2015. The copy of the death certificate (Annexure P-2) has been placed on record. The factum of death has been even certified by the Gram Panchayat, village Haibatpur, District Kurukshetra in its application dated 10th July, 2015 and the report of Assistant Sub-Inspector of Police at the bottom of said application.

The impugned order dated 10.7.2015 passed by the Deputy Superintendent of District Jail, Kurukshetra shows that the concession of parole has been declined to the petitioner as he is not entitled for the same in view of Rule 4(2) of the Rules and he also does not fall under Section 5A of the Act. Rule 4 of the Rules reads as under:-

*“**Eligibility.[Section 10(2)(d)].-** (1) A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after conviction and has earned his first annual good conduct remission under the Act.*

(2) A prisoner, who has been convicted and sentenced for imprisonment less than four years, shall not be eligible for parole.”

As per Rule 4(2), a person who has been convicted and sentenced for imprisonment less than four years, shall not be eligible for parole.

The interpretation of this Rule came up before a Division Bench of this Court in case Om Parkash and another v. State of Haryana and others (CRWP No.211 of 2015) decided on 13.2.2015. In that case, the temporary release was sought for attending the last rites of their father by the petitioners. The parole was declined to them as they had not completed one year of imprisonment after their conviction as provided in Rule 4 sub-rule (1). The Division Bench of this Court laid down as under:-

“The provisions of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('Rules'- for short) enjoins that a prisoner shall be entitled for parole only after he has completed one year of imprisonment after conviction and has earned his first annual good conduct remission under the Act. However, it is to be noticed that the father of the petitioners died on 04.02.2015.

Section 3 (1) (a) of the Act envisages that a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Rules which were published in the Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the Rules cannot supersede the substantive provisions of the Act especially when there is death of the father of the petitioners, which could not have been foreseen.”

Similar ratio of law has been laid down by another Division Bench of this Court in case Rakesh v. State of Haryana and others (CRWP No.1293 of 2014), decided on 5.9.2014 and Ram Singh v. State of Haryana and others (CWP No.253 of 2015) decided on 2.3.2015. In view of the

aforesaid consistent rule of law laid down by the Division Bench of this Court, as there is no restriction in the Act that the parole cannot be granted to a prisoner who has been sentenced for less than four years, thus, rule 4(2) of the Rules will not supersede the substantive provision of the Act, especially in case of death of the family member of the prisoner, which could not have been foreseen.

In view of the aforesaid discussion, the present writ petition is hereby allowed with a direction to the respondents to grant temporary release to the petitioner on parole in accordance with the provisions of Section 3(1)(a) of the Act for a period of one week in terms of Section 3(2) of the Act, after furnishing necessary surety bonds, which should be to the satisfaction of the competent authority. He will surrender before the jail authorities on expiry of the period of parole.

In view of the urgency of the matter, a copy of this order be supplied to learned Counsel for the State under the signatures of the Bench Secretary for onward transmission to the concerned quarters for compliance.

July 15, 2015.
kadyan

[**Darshan Singh**]
Judge