

**IN THE HIGH COURT OF PUNJAB & HARYAN AT
CHANDIGARH**

CRWP No.1280 of 2015
Date of Decision: 11.09.2015

Sunil @ Sonu

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Jasbir Mor, Advocate
for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana for the State.

S.S. SARON, J.

Learned State counsel has filed written statement by way of affidavit of Dr. Harish Kumar, Superintendent of Prison, District Prison, Jind on behalf of respondents No.1 and 2. The same is taken on record.

Heard learned counsel for the parties.

The petitioner by way of the present petition seeks quashing of the impugned order dated 17.08.2015 (Annexure P-4) passed by the Superintendent of Jail, District Jail, Jind-respondent No.2 and also prays for temporary release on parole for a period of four weeks to participate in the marriage of his brother, which is to be solemnized on 16.09.2015.

The petitioner has been convicted by the learned Sessions Judge, Jind vide order dated 06.4.2015 for the offence

punishable under Section 302/34 of the Indian Penal Code ('IPC' – for short) in case FIR No.206 dated 15.03.2014 registered at Police Station City Jind, District Jind. He has been sentenced by a separate order passed on 07.04.2015 to undergo rigorous imprisonment for life; besides, pay a fine of Rs.20,000/-and in default thereof to undergo rigorous imprisonment for a further period of one year. The petitioner aggrieved against the conviction and sentence has filed Cr. Appeal No.D-1003-DB of 2015 in this Court, which is pending. The petitioner has been confined in jail during trial from 15.03.2014 till his conviction and sentence on 07.04.2015 and 08.04.2015. After his conviction also he is in jail. The marriage of the younger brother of the petitioner namely Deepak is to be solemnized on 16.09.2015. The marriage invitation card (Annexure P-1) has been placed on record. The petitioner applied for temporary release on parole, which has been declined to him in view of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('2007 Rules' – for short) on the ground that he has not completed one year of sentence after his conviction and has not earned his first annual good conduct remission under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' – for short).

In the reply that has been filed, it is stated that the parole case of the petitioner cannot be initiated in view of Rule 4 (1) of the 2007 Rules as he has not completed one year of imprisonment after conviction and has not earned his first annual good conduct remission under the Act. The fact of marriage of

the younger brother of the petitioner being fixed for 15.09.2015 is not disputed.

We have given our thoughtful consideration to the matter. The provisions of Section 3 of the Act, provide for temporary release of prisoners on certain grounds. Section 3 (1) (b) reads as under:

“Temporary release of prisoners on certain grounds: (1) *The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release, temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that-*

- (a) XXXX*
- (b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated; or*
- (c) XXXX*
- (d) XXXX”*

A perusal of the above Section 3 (1) (b) shows that a prisoner may be released by the Court if it is satisfied that the marriage of the prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated. In the present case, the marriage of the younger brother of the prisoner (petitioner) is to be solemnized. The petitioner, however, is not being released on parole on the ground that he has not completed one year of imprisonment after conviction and has not earned his first annual good conduct

remission under the Act, which is the requirement of Rule 4 of the 2007 Rules.

A Division Bench of this Court in ***Deepak Vs. State of Haryana and another, 2014 (4) RCR (Criminal) 531***, considered the question where a prisoner had sought parole as his wife had been suffering from pain and cervical spondylitis and low back pain. The said prisoner was declined parole in view of the restrictions contained in Rule 4 of the 2007 Rules, which prohibits the grant of parole until the prisoner completes one year of imprisonment after conviction and has earned his first annual good conduct remission under the Act. This Court held that the restriction of one year of imprisonment after conviction to be eligible for temporary release on parole has been provided by Rule 4 of the 2007 Rules, however, there is no such restriction under the Act and that provisions of the Act would prevail viz a viz the 2007 Rules. In the aforesaid circumstances, it is to be noticed that there is no restriction under the Act for temporary release on parole in the case of marriage of the brother of the prisoner which is to be solemnized on 16.09.2015. The only restriction under the Act is that the period for which a prisoner may be released shall be determined by the State Government so as not to exceed four weeks in terms of Section 3 (2) (b) of the Act where the prisoner is to be released on the ground specified in Section 3 (1) (b) of the Act. Therefore, the restriction imposed on the petitioner for his temporary release on parole for the marriage of his younger brother in view of Rule 4 of the 2007

Rules is unsustainable and is liable to be set aside.

In the circumstances, the writ petition is allowed and the impugned order dated 17.08.2015 (Annexure P-4) is set aside and the petitioner on his furnishing personal bond and surety to the satisfaction of learned District Magistrate, Rohtak shall be temporarily released on parole for a period of four weeks, which shall be counted from the date of his release. The learned District Magistrate shall specify the date on which the petitioner is to surrender on the expiry of four weeks parole.

(S.S. SARON)
JUDGE

(SHEKHER DHAWAN)
JUDGE

11.09.2015
Bhumika/A.Kaundal

Note:- To be referred to reporter: Yes