

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No. 138 of 2015.
Date of Decision : 10.03.2015.

Jaswinder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Sandeep Singh Jattan, Advocate for the petitioner.
Mr. Arun Kumar, Assistant Advocate General, Haryana.

Tejinder Singh Dhindsa, J. (Oral)

Reply of the Superintendent Jail, District Jail, Yamunanagar, has been filed in Court today and the same is taken on record. Copy has been supplied to the counsel for the petitioner.

With the consent of the counsel for the parties, the main petition is taken up for final disposal today itself.

The petitioner, who stands convicted under Section 363 IPC and Sections 5 and 7 of the POCSO Act vide judgment dated 05.06.2014 passed by the Trial Court, has been sentenced to undergo rigorous imprisonment for a period of 10 years.

The petitioner is aggrieved by the order dated 23.12.2014 (Annexure P-2) passed by the Superintendent Jail, District Jail, Yamunanagar, in terms of which, his prayer for grant of parole has been declined.

Counsel for the parties have been heard at length and pleadings on record have been perused.

A perusal of the application submitted by the petitioner seeking parole dated 10.12.2014 at Annexure P-1 would reveal that such concession was being prayed for on three grounds i.e. to undertake repair of his house, to get his mother operated who was suffering from an eye ailment as also to get medical treatment in respect of his wife, who was suffering from Asthma.

Perusal of the speaking order dated 23.12.2014 (Annexure P-2) would show that the prayer of the petitioner seeking benefit of parole had been declined on the solitary ground that he has not completed one year of imprisonment after conviction and as such his claim is barred in terms of Rule 4(1) of the Haryana Good Conduct Prisoners' (Temporary Release) Rules, 2007.

Even the stand taken in the reply filed today in Court is in the same terms.

Having heard counsel for the parties, this Court is of the considered view that the impugned order dated 23.12.2014 at Annexure P-2 cannot sustain.

The restriction of one year's imprisonment after conviction to be eligible for temporary release as has been imposed by way of the Rules cannot supersede the substantive provisions of the Act i.e. the Haryana Good Conduct Prisoners' (Temporary Release) Act, 1988.

Precisely this very issue came up for consideration before a Division Bench of this Court in *Deepak Vs. State of Haryana and another, 2014(4) RCR(Criminal) 531* and it was held as follows :-

"5. We have given our thoughtful consideration to the matter. It may be noticed that in terms of Section 3(1)(a) of the Act, 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 Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was 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 substantive provision of the Act."

Following the dictum laid down by this Court in **Deepak's case (supra)**, the impugned order dated 23.12.2014 (Annexure P-2) is set-aside.

Directions are issued to the competent authority i.e. the Superintendent Jail, District Jail Yamunanagar to consider the prayer made by the petitioner seeking parole as per application dated 10.12.2014 at Annexure P-1 strictly on merits and without adverting to the bar contained in Rule 4 of the Haryana Good Conduct Prisoners' (Temporary Release) Rules, 2007. Fresh order be passed within a period of one week from today.

Disposed of.

March 10, 2015.
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(TEJINDER SINGH DHINDSA)
JUDGE