

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP No. 1597 of 2015 (O&M)
Date of Decision: 10.11.2015.

Anil Kumar

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. R.S. Dhull, Advocate for the petitioner.

Mr. Dhruv Dayal, D.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

Two separate replies i.e. one by the Deputy Superintendent, District Jail, Yamuna Nagar and the another by Deputy Superintendent of Police, Jagadhari, District Yamuna Nagar have been filed in Court today and the same are taken on record. Copies have 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.

Petitioner stands convicted vide judgment dated 9.11.1993 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari and has been sentenced to undergo RI for a period of 5 years and to pay fine of Rs.2500/- in case FIR No.126 dated 31.3.1991, under Sections 498-A/306 IPC, registered at Police Station Jagadhari.

Petitioner is aggrieved of the order dated 3.11.2015 passed by the Superintendent Jail, District Jail, Yamuna Nagar in terms of which the application preferred by him for grant of concession of parole has been declined.

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

Concededly, the application preferred by the petitioner seeking concession of parole was on the ground that the marriage of his sister's son is fixed for 14.11.2015.

Perusal of the impugned order dated 3.11.2015 declining the prayer of parole would show that the same has been passed on the solitary ground that the petitioner has not completed one year of imprisonment after conviction and as such the 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 3.11.2015 passed by the Superintendent Jail, District Jail, Yamuna Nagar cannot sustain.

Section 3 of the Haryana Good Conduct Prisoners (Temporary release) Act, 1988 reads in the following terms:

“3. 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) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or
(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) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or
(d) it is desirable to do so for any other sufficient cause
(2) The period for which a prisoner may be released shall be

determined by the State Government so as not to exceed-

(a) Where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

(b) Where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks:

Provided that the temporary release under clause (c) can be availed more than one during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all or any other ground specified there under.”

In terms of Section 3, a prisoner is entitled to concession of parole in a number of eventualities including marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, **sister's son or daughter**. The restriction of one year 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 Prisoner's (Temporary Release) Act, 1988.

In taking such view, I would draw support from a Division Bench of this Court in ***Deepak Vs. State of Haryana & another, 2014 (4) RCR (Criminal) 531***.

Similar view has also been taken by a Division Bench of this Court in a recent judgment dated 05.09.2014 rendered in ***CRWP No.1293 of 2014 titled as Rakesh Vs. State of Haryana & others***.

Following the dictum laid down by this Court in the judgments noticed herein above, the impugned order dated 3.11.2015 is set aside.

Under normal circumstances this Court would have proceeded to remand the matter back to the competent authority for taking a decision afresh on the application submitted by the petitioner for grant of concession

of parole. However, keeping in view that the marriage of the son of the petitioner's sister is slated for 14.11.2015 and coupled with the fact that in the affidavit dated 9.11.2015 of the Dy.S.P., District Jail, Yamuna Nagar such fact stands verified and conceded, the prayer for concession of parole is allowed for a period of 10 days starting forthwith i.e. today. Respondents are directed to ensure compliance of the instant order immediately.

Petition is disposed of.

A copy of this order be given to learned counsel for the petitioner under the signatures of Bench Secretary.

(Tejinder Singh Dhindsa)
Judge

10.11.2015
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