

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRWP No. 1647 of 2015
Date of Decision: 20.11.2015**

Gurmit Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Ms. Gurjeet Kaur, Advocate,
for the petitioner.

S.S. Saron.J.

The petitioner has filed this petition under Article 226 of the Constitution of India for directing Superintendent Central Jail, Ludhiana (respondent No. 2) to release him on emergency parole for four weeks to celebrate the marriage of his daughter namely Pawandeep Kaur fixed for 26.11.2015.

Notice of motion to A.G., Punjab.

On the asking of the Court, Mr. Arshwinder Singh, Addl. A.G., Punjab, accepts notice on behalf of the respondents-State.

Heard learned counsel for the parties.

The petitioner has been convicted in case FIR No. 58 dated 17.05.2012, registered at Police Station Raikot, District Ludhiana for the offence punishable under Section

302 IPC. He has been sentenced by the learned Sessions Judge, Ludhiana to undergo rigorous imprisonment for life, vide order dated 14.09.2015.

Aggrieved against the said conviction and sentence, the petitioner has filed **CRA-D-1540-DB-2015** which is pending in this Court. The petitioner has been in custody and according to his custody certificate (Annexure P-2), he has undergone imprisonment for three years, four months and twenty five days as on 13.11.2015. The marriage of daughter of the petitioner is to be solemnized on 26.11.2015 for which he is entitled to parole. The Superintendent Central Jail, Ludhiana, vide order dated 13.11.2015 (Annexure P-1) has declined temporary release on parole to the petitioner, in view of the proviso to Rule 3 (2) of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 ('Rules'-for short) as the petitioner has not undergone four months in jail after his conviction on 14.09.2015. Aggrieved against the same the petitioner has filed the present petition.

Learned counsel for the petitioner submits that the provisions of the Rules are procedural in nature; besides the proviso is to be read in the context of Rule 3 (2) of the Rules and a substantive right available to a prisoner, in terms of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act'- for short) cannot be superseded.

In response, learned counsel for the State contends that the Rules have been framed, in terms of the provisions of Section 10 (2) (d) of the Act which provides the conditions on which and the manner in which prisoners may be released temporarily under the Act. It is submitted that the Rules provide for procedure for temporary release and an application for temporary release is not to be processed unless the prisoner had maintained good conduct at least for four months after conviction. It is then that an application for temporary release is to be considered. Therefore, according to learned State counsel, the order dated 13.11.2015 (Annexure P-1) is just and proper and in accordance with the provisions of the Act and the Rules.

We have given our thoughtful consideration to the matter. As has already been noticed the petitioner has been sentenced to life imprisonment. After his conviction on 14.09.2015 for the offence punishable under Sections 302 IPC, according to his custody certificate (Annexure P-2), he has undergone imprisonment of three years, four months and twenty five days till 13.11.2015. The custody certificate (Annexure P-2) issued by the Assistant Superintendent, Central Jail, Ludhiana mentions that there is no other case pending against the petitioner, besides, he has not misused bail/parole etc. In fact no parole has been granted to him after his conviction. He has undergone imprisonment from

19.06.2012 to 13.09.2015 as an under trial prisoner.

The provisions of the Act provide for temporary release of a prisoner for good conduct on certain conditions.

Section 3 (1) (b) of the Act which is relevant in the present case reads follows:-

"3. Temporary release of prisoners on certain grounds:----- (1) *The State Government may, in consultation with the District Magistrate 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) xxxxxx

(b) *the marriage of the prisoner's son or daughter is to be celebrated; or*

(c) xxxxxx"

The above provisions show that temporary release on parole can be granted to a prisoner for the solemnization of marriage of his son or daughter. In terms of Section 3 (2) (b) of the Act where the prisoner is to be released for the marriage of his son or daughter, he can be released for a period which shall not exceed four weeks.

The temporary release on parole has been declined to the petitioner, in terms of the proviso to Section 3 (2) of the Rules which read as follows:-

"3. Procedure for temporary release. [Sections 3, 4, 10 (1), 10 (2) (b), 10 (2) (d) and 10 (2) (e)]

(1) xxxxxx

(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 District 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*

Provided that no such application shall be processed by the superintendent of Jail, unless the prisoners had maintained good conduct after his conviction at least for four months in jail.

(3) to (7) xxxxxx

In terms of Section 3 (2) of the Rules, the Superintendent of Jail is to forward the application of a prisoner along with the report of the District Magistrate with his recommendations to the Inspector General Prisons. The Inspector-General is then to record his views on the case as to whether the prisoner is to be released or not and submit

the same to the Releasing Authority for orders; besides, verification is to be done. The proviso envisages that no application is to be processed by the Superintendent of Jail unless the prisoner has maintained good conduct after his conviction at least for four months in jail. The proviso to the Rule 3(2) of the Rules is to be limited to the subject matter of the enacting clause. It is to be read and considered as a proviso. It is not to be taken as a separate or an independent enactment.

The provisions of the Act contain a substantive right for release of prisoners on certain grounds. The marriage of the daughter of the petitioner is indeed where the presence of the father is required and may even be necessary. Therefore, the provisions of the substantive Act cannot be limited or curtailed by the Rules even if such provision is provided for in the enactment providing for framing of Rules.

This Court in case of **Mahavir vs. State of Haryana** 2012 (4) RCR (Crl.) 230 has held that emergency parole can be granted to a convict to attend various situations over which he has no control i.e. death or fixation of marriage. Besides, it was held that the Rules cannot override the Act.

A Division Bench of this Court in **Gurpreet Singh vs. State of Punjab and another** 2012 (3) RCR (Criminal)

504 considered a case where immediately after the conviction of the prisoner in the said case he applied for emergency release for four weeks on account of illness of his mother who was advised operations. It was held that the prisoner was entitled to emergency release on parole under Section 3 (1) (a) of the Act. Proviso to Rule 3 (2) which provides that no application shall be processed by the Superintendent of Jail, unless the prisoner had maintained good conduct after his conviction for at least four months in jail, was held to be a procedural provision. It was directory in nature and not mandatory and the provisions of the Act are substantive provision which would prevail over the procedural provisions of the Rules.

The marriage of the daughter of the petitioner who is undergoing his imprisonment is a solemn occasion for which the father has a pious obligation to perform and it has to be done. Therefore, we are of the view that the Rules cannot override the provisions of the Act so as to deny the release of a prisoner for the marriage of his daughter . His right to be released cannot be curtailed by a proviso in the Rules.

In the circumstances, the criminal writ petition is allowed and the petitioner on his furnishing personal bonds and surety to the satisfaction of the competent authority under the Act and Rules, shall be released on parole for a

period of four weeks from the date of his release. The competent authority shall specify the date on which the petitioner is to surrender in jail after expiry of four weeks of his release.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

November 20, 2015
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