

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

**CRWP No.187 of 2015
Date of decision: 11.02.2015**

Babbu alias Pappu

...Petitioner

versus

State of Haryana and another

... Respondents

**CORAM : HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE GURMIT RAM**

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

Mr. Naveen Kaushik, Addl. Advocate General, Haryana.

S.S. SARON, J.

The Criminal Writ Petition has been filed by the petitioner Babbu alias Pappu seeking emergency parole to attend the last rites of his brother, who died in a road accident on 31.01.2015.

According to the petitioner, there is no other male member in his family to perform last rites of the deceased. His father had died in the year 2012. The petitioner is in custody for the last four years. During his confinement, his behaviour has been satisfactory and there has been no complaint against him. The last rites/'Rasam Kirya' of his brother is to be performed on 13.02.2015.

Notice of motion was issued in the case for today.

Mr. Naveen Kaushik, Additional Advocate General, Haryana for the State on instructions from Sh. Lokesh Sharma, Warden, District Jail, Yamuna Nagar at Jagadhri submits that the fact of death of brother of the petitioner has been verified as correct. It is, however, submitted that the petitioner is not eligible for release on parole in view of the provisions of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, ('Rules' – for short) which 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 remission under Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' – for short). The petitioner it is submitted was convicted on 26.02.2014 and, therefore, he has not completed one year of imprisonment after his conviction so as to be eligible for temporary release on parole.

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 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 provisions of the Act.

The admitted position is that the brother of the petitioner namely Rajesh alias Raju has died on 31.01.2015. The

petitioner has a right for consideration for release on parole in terms of Section 3 (1) (a) of the Act. The restriction for eligibility for parole is provided by the Rules and not by the provisions of the Act. The provisions of the Act have statutory force and the Rules framed thereunder cannot be intended to supplement or supersede the Act.

In the circumstances, we allow the Writ Petition with the 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 the period provided for in terms of Section 3 (2) of the Act after the petitioner has furnished necessary surety to the satisfaction of the competent authority.

Copy of the order be given to the learned State counsel under the signatures of the Special Secretary for necessary compliance.

(S. S. SARON)
JUDGE

11.02.2015
G. Bhardwaj

(GURMIT RAM)
JUDGE

Note : To be referred to reporter: Yes