

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.211 of 2015
Date of decision: 13.02.2015

Om Parkash and anotherPetitioners

versus

State of Haryana and others Respondents

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

Present: Ms. Paramjit Kaur Deol, Advocate for the petitioners.

Mr. Baljinder Singh Virk, DAG, Haryana.

S.S. SARON, J.

Heard learned counsel for the parties.

The petitioners by way of present writ petition under Article 226 of the Constitution of India seek temporary release on parole to attend the last rites of their father, who died on 04.02.2015. The last rites are to be performed on 16.02.2015.

It is submitted that after conviction of the petitioners in case FIR No.38 dated 11.05.2011 registered at police station, Nathusari Chopta, District Sirsa for the offences under Sections 302, 323, 148, 149 and 216 of the Indian Penal Code ('IPC' – for short), they are undergoing life imprisonment at the District Jail, Sirsa. The petitioners have assailed their conviction and sentence by way of Crl. Appeal No.D-787-DB of 2014, which is pending. While undergoing life imprisonment, it is stated that they have not committed any jail offence and their conduct has been very good.

They are permanent residents of village Nejia Khera, Block Nathusari Chopta, District Sirsa. The Gram Panchayat village Nejia Khera has submitted its report dated 04.02.2015 (Annexure P-2) requesting for fourteen days parole for the petitioners to attend the last rites of their father.

Notice of motion was issued to the Advocate General, Haryana for today.

Learned counsel for the State has submitted on instructions from Shri Satpal Sharma, Warden, District Jail, Sirsa that the father of the petitioners has died on 04.02.2015. However, it is submitted that the petitioners are not eligible for being released on parole as they have not completed one year of imprisonment after their conviction on 20.03.2014 and have not earned their first annual good conduct remission under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act'- for short).

We have given our thoughtful consideration to the matter.

The provisions of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('Rules'- for short) 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 good conduct remission under the Act. However, it is to be noticed that the father of the petitioners died on 04.02.2015.

Section 3 (1) (a) of the Act envisages that 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 were 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 the substantive provisions of the Act especially when there is death of the father of the petitioners, which could not have been foreseen.

The admitted position is that the father of the petitioners has died on 04.02.2015 and his last rites are to be performed on 16.02.2015. 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 petitioners 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 petitioners furnish necessary surety each to the satisfaction of the competent authority.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

13.02.2015
A.Kaundal