

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

CRWP No.489 of 2015

Date of decision:22.04.2015

Naresh

... Petitioner

Vs.

State of Haryana & others

... Respondent

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

Present:- Mr. A.S. Trikha, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

...

TEJINDER SINGH DHINDSA, J.

Reply of the Deputy Superintendent, District Jail, Jhajjar 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.

Petitioner stands convicted vide judgment dated 23.09.2014 passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar and has been sentenced to undergo RI for a period of 7 years and to pay fine of Rs.2100/- in case FIR No.198 dated 24.09.2009, under Sections 307/149/323 IPC, registered at Police Station Sahlawas.

Petitioner is aggrieved of the order dated 24.03.2015 passed by the Superintendent of Prison, District Prison, Jhajjar in terms of which an application preferred by the wife of the petitioner, namely, Smt. Prabha

Devi for grant of parole to her husband has been declined.

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

The application preferred by Smt. Prabha Devi dated 13.03.2015 seeking the concession of parole for her husband (present petitioner) stands appended as Annexure P-1 and a perusal thereof would reveal that the couple has four children out of which two are already studying in school in Class III and Class V respectively and the other two children being younger in age are to be admitted afresh in school. It has further been averred in the application that there is no other male member in the family and for the purpose of admitting the two children for the first time in school as also to ensure continuation of study of the two school going children in the next session, the presence of both the parents is necessary and for such purpose, parole for four weeks' was sought. Such application was supported by a certificate issued by Gian Jyoti Senior Secondary School and placed on record at Annexure P-2 in which it has been stated that it would be compulsory for both the parents i.e. father and mother to be present for purposes of admission.

Perusal of the order dated 24.03.2015 passed by the Superintendent of Prison, District Prison, Jhajjar declining the prayer for parole would show that the same has been on the solitary ground that the petitioner had 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 24.03.2015 passed by the Superintendent of Prison, District Prison, Jhajjar 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 for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. Temporary release under Section 3 of the Act can also be considered on the ground of marriage of the prisoner himself or close relative under Section 3(b). Temporary release may also be considered **'for any other sufficient cause'** under Section 3(d).

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.

Precisely, this very issue came up for consideration before a Division Bench of this Court in ***Deepak Vs. State of Haryana & 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.”

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 24.03.2015 is set aside.

Directions are issued to the Competent Authority i.e. the Superintendent of Prison, District Prison, Jhajjar to consider the prayer raised on behalf of the petitioner seeking parole as per application dated 13.03.2015 at Annexure P-1 (along with supporting documents) strictly on merits and without adverting to the bar contained in Rule 4 of the Haryana Good Conduct Prisoner's (Temporary Release) Rules, 2007.

A fresh order be passed within a period of one week from today.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

22.04.2015
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