

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

**Crl. Writ Petition No. 525 of 2015 (O&M)
Date of decision : 15.05.2015**

Balraj

..... Petitioner

versus

State of Haryana & Ors.

... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

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

Mr. Deepak Kr. Grewal, DAG Haryana.

--

ANITA CHAUDHRY, J.

The petitioner is undergoing sentence of four years awarded to him in FIR No. 14 dated 09.01.2006 for committing an offence under Sections 420, 468 and 471 IPC, Police Station Civil Lines, Rohtak. He is stated to be in jail since 09.06.2014.

His wife filed an application dated 20.03.2015 seeking parole for her husband in order to get their children admitted in next classes. It was averred in the application that she was an illiterate lady and not in a position to arrange for admission etc. of the children.

It appears that the said application was not decided by the authorities, leading to the institution of the present criminal writ seeking emergency parole of four weeks for the admission of the children, under Rule 8(1) of the Haryana Good Conduct

Prisoners (Temporary Release) Rule 2007(for brevity, 2007 Rules) read with the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, as amended from time to time (for short, the Act).

The prayer was made for release of the petitioner during the month of April, 2015. A letter dated 29.04.2015 has been placed on record written by the Incharge, Model School, Kalanaur to the parents of Mukul and Jagriti asking them to get the children re-admitted and pay the dues on promotion to the next classes.

In the reply filed on behalf of the State, the prayer for parole has been opposed on the ground that the petitioner does not fulfill the condition laid down in Section 4(1) of 2007 Rules as he has not completed one year imprisonment after his conviction and has not earned Ist Annual Good Conduct Remission.

Section 3 of the Act stipulates temporary release of prisoners on certain grounds, viz. serious illness of prisoner or serious illness or death of prisoner's family, or marriage of the prisoner himself or close relative, for ploughing, sowing or harvesting or carrying any agricultural pursuits. An exception clause 3(d) has been inserted for the authorities to consider the temporary release where sufficient cause was shown to do so.

It is apt to mention here that the restriction of one year imprisonment after conviction to be eligible for temporary release has been imposed by 2007 Rules. The same cannot supersede the substantive provisions of the Act.

A Division Bench of this Court, while dealing with similar issue, in **Deepak Vs. State of Haryana & Anr. 2014(4) RCR(Crl.) 531**, observed 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 been reiterated 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** and by Single Judge in **Naresh Vs. State of Haryana & Ors. CRWP No.489 of 2015, decided on 22.04.2015.**

Once the ground taken for declining the relief to the petitioner is not legally sustainable, in view of the law laid down above, there is no impediment in allowing the instant petition.

The instant petition is disposed of. Directions are issued to the Competent Authority i.e. the Superintendent, District Jail, Rohtak to consider the prayer raised on behalf of the petitioner seeking parole as per application dated 20.03.2015 (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 of receipt of a copy of this order.

May 15,2015
Jiten

(ANITA CHAUDHRY)
JUDGE