

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-685-2015

Date of decision:- 18.5.2015

Rashid

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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

Mr. Naveen Kaushik, Addl. A.G., Haryana
for the State.

S.S SARON, J.

The learned counsel for the State has filed reply of Sh.Kulbir Singh, Superintendent, District Jail, Gurgaon on behalf of respondents No. 1 to 3. The same is taken on record.

Heard learned counsel for the parties.

Criminal writ petition has been filed by the petitioner for grant of emergency parole to him to celebrate the marriage of his sister namely, Sabina with Abdul Majid.

The petitioner was arrested by the police of Police Station Tauru, District Mewat in case FIR No. 354 dated 01.11.2011 for having committed an offence punishable under Section 302 IPC. He was convicted and sentenced by the learned Additional Sessions Judge, Mewat to life imprisonment vide judgment dated 16.12.2014

and order dated 18.12.2014. Criminal Appeal No.D-61-DB of 2015 filed by him is pending in this Court. While undergoing life imprisonment, the father of the petitioner submitted an application (Annexure P- 1) for allowing parole to the petitioner to celebrate the marriage of his sister namely, Sabina, which is fixed for 22.5.2015 and 23.5.2015.

According to learned counsel for the petitioner, the petitioner is entitled for being released on parole for the marriage of his sister, in view of the provisions of Section 3(1)(b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('the Act' - for short).

In the reply that has been filed, it is stated that the petitioner has been convicted by the learned Additional Sessions Judge, Mewat on 18.12.2014 and as such he has not completed one year of his imprisonment after conviction and has not earned his first annual good conduct remission under the Act. Therefore, in terms of Rule 4 (1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules 2007 ('Rules'- for short) he is not entitled for parole, besides marriage of the real sister of the prisoner does not come within the definition of emergency parole.

Learned counsel for the State has submitted that in view of the embargo created by Rule 4 (1) of the Rules, the petitioner is not entitled for emergency parole.

We have given our thoughtful consideration to the matter.

As per the provisions of Section 3 (1) (b) of the Act, the State

Government may in consultation with the District Magistrate or any other officer appointed in his behalf, by notification in the official gazette and subject to such condition 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 the marriage of the prisoner himself, his son, daughter, grand-son, grand-daughter, brother, sister, sister's son or daughter is to be celebrated. In terms of Sub-Section (2) of Section 3, Clause (b) it is provided that where the prisoner is to be released on the grounds specified in Clause (b) or Clause (d) of Sub-Section (1), the period of his release shall be determined by the State Government as not to exceed four weeks. The embargo is created by Rule 4 of the Rules, which provides for eligibility and it is envisaged that a prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after conviction and has earned his first annual good conduct remission under the Act.

In terms of Section 3 (1) (b) of the Act, a prisoner is entitled for parole, if the marriage of his sister is to be celebrated. 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, published in Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. However, there being no such restriction in the substantive provisions of the Act, the Rules framed thereunder are not to supersede the substantive provisions of the Act. The fact that the marriage of Sabina, sister of the petitioner is to be performed has not been disputed in the reply.

The provisions of the Act have statutory force and the Rules framed thereunder cannot be intended to be supplement or supersede the provisions of 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) (b) 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.

A copy of this order, duly attested by the Special Secretary of this Court, be furnished to the learned State counsel, for onward transmission and compliance.

(S.S SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 18, 2015
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