

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

CRWP No.1419 of 2015.
Decided on:-28.04.2016.

Hem Raj.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Varinder Singh Rana, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. A.G., Haryana.

HARI PAL VERMA, J.

Petitioner Hem Raj son of Vijay Singh resident of village Chunchhakwas, District Jhajjar, now confined in District Jail, Rohtak, has filed the present criminal writ petition under Article 226 of the Constitution of India for issuance of a direction to the respondents for grant of 6 weeks emergency parole to the petitioner so as to attend his wife. His wife is stated to be suffering from coronary artery disease 'Angina on exertion class-III' and 'triple vessel disease'.

The petitioner has further assailed the order dated 10.9.2015

passed by the Superintendent, District Jail, Rohtak (Annexure P-4) whereby having recourse to Section 10(ii) of the Haryana Good Conduct Prisoner's (Temporary Release) Rules, 2007 (for short, the Rules), the application of the petitioner for grant of parole has been rejected as he does not fulfil the conditions of the Rules.

The petitioner was convicted in FIR No.160 dated 21.12.1985 under Sections 393, 398 and 307 read with Section 34 IPC, Sections 25 and 27 of the Arms Act, 1959 and Section 6 of the Terrorist and Disruptive Activities (Prevention) Act registered at Police Station, Kalanaur. He was sentenced to undergo rigorous imprisonment for 10 years and is, thus, undergoing the sentence in District Jail, Rohtak. His conviction was upheld upto the Supreme Court.

Learned counsel for the petitioner has contended that the petitioner has availed one parole after his conviction and due to family reasons, he could not surrender in jail well within time and absconded from parole from 22.11.2000 to 29.6.2014. For the said conduct of the petitioner, FIR No.183 dated 1.9.2014 under Sections 8 and 9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short, the Act) was registered against him in Police Station Beri. He was tried in the said FIR and was convicted and sentenced for a period of 6 months along with fine of Rs.500/- vide judgment and order dated 31.1.2015 passed by learned Additional Chief Judicial Magistrate, Jhajjar.

Learned counsel for the petitioner has further stated that vide order dated 10.9.2015 (Annexure P-4), the petitioner has been denied parole on the ground that he was absented for the aforesaid period. The denial of parole has attracted the principle of double jeopardy as he cannot be punished twice for the same offence. Learned counsel has stated that the wife of petitioner is suffering from serious heart ailment. She got treatment from Sir Ganga Ram Hospital, New Delhi and as per the discharge summary, she was advised Myocardial revascularization. The condition of his wife is not good. She was taken to General Hospital, Jhajjar and the doctors have advised her surgery, otherwise her life would be in danger. He has referred to the treatment being taken from the Department of Cardiology, Sir Ganga Ram Hospital, New Delhi and from General Hospital, Jhajjar.

Learned counsel for the petitioner has argued that taking into consideration the ailment of his wife, the petitioner requires parole. He has relied upon the judgment of this Court passed in **CRWP No.677 of 2014** titled as **Deepak Versus State of Haryana and another** decided on 3.6.2014 to contend that in terms of Section 3(1)(a) of the Act, the prisoner is entitled for parole if a member of his 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. There being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act.

Learned counsel for the petitioner has further contended that taking into consideration the nature of disease being faced by his wife, the doctor of General Hospital, Jhajjar has recommended her by-pass surgery and the petitioner is required to attend her. In case the petitioner is not allowed parole, life of his wife would be in danger.

Reply on behalf of the respondents-State has been filed wherein it has been stated that the petitioner was granted parole, but he remained absent from parole w.e.f. 22.11.2000 to 29.6.2014 and was admitted in jail through police. A case FIR No.183 dated 1.9.2014 under Sections 8 and 9 of the Act was registered against him at Police Station, Beri. He was tried and convicted in the said case and was sentenced to undergo RI for six months and to pay a fine of Rs.500/-.

Learned State counsel while referring to Rule 10 of the Rules has contended that if a convict overstays 30 days or more of his parole/furlough, his case shall not be entertained by the Superintendent of Jail earlier than two years from the date of his surrender/arrest. In this case, the petitioner has remained absent from 22.11.2000 to 29.6.2014 i.e. 13 years, 7 months and 7 days. Therefore, as per said provision, the petitioner is not entitled to seek parole as he has not surrendered on due date after availing parole. He was, rather, arrested by the police and was admitted in jail on 26.9.2014. In this manner, he has not completed 2 years' period after his arrest from parole.

I have heard learned counsel for the parties.

Rule 10 of the Rules reads as under:

“10. A convict, who does not surrender in jail on the due date and time after availing the granted parole/furlough his further parole/furlough shall be considered as under:

- (i) If the convict overstays 15 days of his parole/furlough, his parole/furlough case shall not be entertained by the Superintendent of Jail earlier than one year from the date of his surrender/arrest.*
- (ii) If the convict overstays 30 days or more of his parole/furlough, his case shall not be entertained by the Superintendent of Jail earlier than two years from the date of his surrender/arrest.”*

The judgment in the case of **Deepak's case(supra)** cited by learned counsel for the petitioner is of no help to him as the facts in that case were entirely different from the present case. In that case, the petitioner was declined parole by the Superintendent Jail on the ground that he had not completed one year imprisonment after his conviction. However, in the present case, the petitioner was granted parole earlier, but he remained absent from 22.11.2000 to 29.6.2014 i.e. for a long period of 13 years, 7 months and 7 days. Thereafter, he was arrested by the police and an FIR was registered against him under Sections 8 and 9 of the Act. He was tried, convicted and sentenced in the said case.

The petitioner has prayed for grant of parole for his ailing wife,

but this Court cannot ignore the fact that the petitioner is not entitled to seek equitable relief from this Court, as earlier, he was granted parole, but thereafter, on completion of parole period, he did not surrender to the jail authorities.

Therefore, this Court does not find that the petitioner is entitled to claim the grant of parole before the expiry of the period of two years as mentioned in Rule 10(ii) of the Rules.

Accordingly, the present petition stands dismissed.

April 28, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE