

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

**Criminal Writ Petition No.1339 of 2016
Date of Decision:-10.11.2016**

Ashwani Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present:- Mr. Randeep Singh Dhull, Advocate
for the petitioner.

Mr. Manish Bansal, Deputy A.G., Haryana.

HARI PAL VERMA J.(Oral)

Prayer in this petition filed under Article 226/227 of the Constitution of India read with Section 3 Sub Sections (1)(d) and Section 7 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short “the Act”) is for issuance of direction to the respondents to grant parole/interim bail to the petitioner so as to enable him to file Special Leave Petition against the judgment dated 19.9.2016 whereby the appeal i.e. CRA-D-1112-DB of 2009 titled “Ashwani Kumar vs. State of Haryana” filed against the judgment of conviction dated 4.12.2009 passed by learned Sessions Judge, Kaithal, was dismissed.

Learned counsel for the petitioner states that the petitioner-accused was named as accused in FIR No.107 dated 20.10.2007 for

commission of offence under Section 364-A IPC, registered at Police Station Dhand, Kaithal. After having been convicted by learned Sessions Judge, Kaithal vide judgment dated 4.12.2009, the petitioner had filed an appeal and during the pendency of the appeal he has been extended the concession of parole from time to time and has never misused the said concession. He is in custody for more than seven years and has never given any chance to the complainant or the jail authority which may disentitle him for the relief claimed in the petition.

Since the appeal against the conviction has been dismissed by this Court on 19.9.2016, he is required to file Special Leave Petition before the Hon'ble Supreme Court of India and for that purpose he required to consult/engage a lawyer of some competence. Therefore, the petitioner needs to be released on parole. However, he undertakes that the petitioner shall not misuse the said concession in any manner and is ready to abide by any terms and conditions which this Court may deem fit in view of the peculiar facts and circumstances.

On the other hand, reply by way of affidavit of Shri Rattan Singh, Superintendent, District Jail, Yamuna Nagar has been filed on behalf of respondents No.1 to 3. Learned State counsel on the strength of this reply has argued that benefit of parole/furlough is only a concession given by the State Government and a prisoner cannot claim it as a matter of right. Further the State Government has amended the Parole Act/rules from time to time vide notifications in the year 2012, 2013, 2014 and 2015 and categorized the convicts sentenced under various sections as per the nature

of the crime.

Considering the nature of offence, which falls under the category of 'hardcore prisoner' as the petitioner is sentenced for kidnapping for ransom under Section 364-A IPC as per the Act and as per the Act, there is no provision for grant of parole to a convict to enable him to file appeal before the Supreme Court. He further states that as per Haryana Government notification dated 18.12.2007 under Section 3(1)(d) of the Act sufficient cause has been defined, which may be considered from amongst the following reasons namely :-

- “(i) Admission in school/ colleges/ professional institutions of dependents of the convict:
- (ii) Medically scheduled delivery of wife of the convict:
- (iii) House repairs/new construction of house owned by the convict. Parole for house repair shall be granted only once in three years;
- (iv) Marriage of prisoner's brother's son or daughter to be celebrated in case his brother is not alive.”

Therefore, in view of the aforesaid provision, petitioner cannot claim parole for filing of Special Leave Petition before the Supreme Court. Learned State counsel also states that even otherwise the petition is premature as the jail authority has not received any application/representation from the petitioner whereby he prayed for grant of parole.

I have heard learned counsel for the parties.

No doubt the claim of the petitioner seeking parole is not

covered under the provision of Section 3(1)(d) of the Act but it is presumed that a convict, whose case has been dismissed, is required to file an appeal and once the appeal has been dismissed, he would not like to take any chance and would rather like to engage the best lawyer of good competence. This Court finds that the petitioner deserves to be granted the concession of parole. The judgment referred by learned counsel for the petitioner i.e. Writ Petition (CRL) 1474/2009 titled “Rajesh Sharma @ Pappu vs. State of NCT of Delhi”, decided on 1.12.2009, has relevance in the facts and circumstances of the case wherein the Delhi High Court while accepting the claim of the convict for parole has observed as under :-

“8. The last ground given by the respondent for rejecting parole is that the petitioner can file a Special Leave Petition from jail itself where free legal aid is available. As noted earlier, a Special Leave Petition is the last resort available to the petitioner. He would, therefore, like to engage the best Advocate he can and to adequately brief him on the defence taken by him. Therefore, the third ground for rejecting the parole is not good enough to be sustainable in law.”

Therefore, in view of the judgment **Rajesh Sharma @ Pappu's** case (supra) this Court finds that the petitioner be released on parole for a period of two weeks only from the date of his release subject to following conditions :-

1. That during the parole the petitioner shall not visit anywhere, other than Delhi and Chandigarh.
2. That petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the

satisfaction of the competent authority.

3. That the petitioner shall comply with such other conditions as the respondent may impose to ensure that he does not jump the parole.
4. That the petitioner shall not extend any threat and will not influence the complainant in any manner either directly or indirectly.

With the abovesaid observations, the present petition is disposed of.

November 10, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No