

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

**CRWP No. 1382 of 2016 (O&M)
Date of decision: 17.11.2016.**

Kartar Singh Petitioner.

Versus

State of Haryana and others Respondents.

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

Present: Mr. Randeep S. Dhull, Advocate, for the petitioner.
Mr. S.S. Pannu, DAG, Haryana, for the respondents.

S.S. SARON, J.

The petition has been filed under Articles 226/227 of the Constitution of India read with Section 3 sub-sections (1) (b) and (2) (b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' - for short) for temporary release of the petitioner on parole for a period of four weeks to attend the marriage of his sister's daughter ('bhanji') which is to be solemnized on 21.11.2016.

It is submitted that the petitioner is the only maternal uncle of Pooja whose marriage is to be solemnized with Sandeep on 21.11.2016. Therefore, the presence of the maternal uncle at the marriage ceremony is necessary and essential. The petitioner filed an application dated 13.09.2016 (Annexure P1) addressed to the Superintendent, District Jail, Karnal for grant of temporary release. The same, it is submitted, has not been considered or dealt with. Besides, in support of his claim for

temporary release on parole, he has placed on record the wedding card (Annexure P2) and also Panchayat report dated 21.09.2016 (Annexure P3).

Reply by way of affidavit dated 05.11.2016 of Mr. Sher Singh, Superintendent of Prison, District Prison, Karnal, has been filed. It is *inter alia* stated that the petitioner is undergoing life imprisonment in case FIR No. 434 dated 31.12.2000, registered at Police Station Gharaunda, District Karnal, for the offences punishable under Sections 364, 302, 201, 216, 120-B of the Indian Penal Code ('IPC' - for short); besides, under Section 25 of the Arms Act. He was convicted by the learned Additional Sessions Judge, Karnal on 17.05.2004. At present, he is undergoing his life imprisonment at District Prison, Karnal. The factum of the marriage of the petitioner's sister's daughter ('bhanji') has been verified from the Superintendent of Police, Sonipat through SHO, Police Station Gohana, District Sonapat. The details of the parole that have been availed by the petitioner from 20.10.2004 to 31.05.2016 have been mentioned.

It is submitted that the petitioner has already availed four weeks' parole during the calendar year 2016 from 31.05.2016 to 29.06.2016 for the admission of his children. Therefore, according to the provisions of Rule 11 (3) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('Rules' - for short), a convict is to be granted parole only for once either under Section 3 (2) (b) or under Section 3 (1) (d) of the Act and not both separately during the calendar year except as provided under Rule 8 of the Rules. Therefore, it is submitted that a convict can be granted parole only for once i.e. for four weeks either under Section 3 (1) (b) of the

Act that is for the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter or under Section 3 (1) (d) of the Act i.e. when it is desirable to do so for any other sufficient cause. 'Sufficient cause', it is submitted, is to be considered from amongst the reasons as mentioned in Rule 8 of the Rules.

It is submitted that if the statutory Rules impose a legal bar on the consideration of the case of a petitioner for temporary release under the Act, the same is not to be overcome by a judicial order. According to the respondents, the petitioner is not entitled for temporary release on parole.

An additional reply by way of reply dated 14.11.2016 of Mr. Sher Singh, Superintendent of Prison, District Prison, Karnal has also been filed. It is submitted that in compliance of the order dated 07.11.2016, the fact regarding other male members of the petitioner's family have been verified through SHO, Police Station Ghraunda, District Karnal, who has reported vide police report dated 10.11.2016 that verification had been conducted from the residents of Ward No.2, Jai Singh Colony, Ghraunda and found that the marriage of Pooja daughter of Krishna i.e. the sister of Kartar (petitioner) is to be solemnized on 21.11.2016 and that the petitioner is the only brother of the mother of the bride in the family to perform 'Bhaat Ceremony'. A copy of the police report dated 09.11.2016 (Annexure R1) has been placed on record.

We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance have perused the records.

The petitioner seeks temporary release for four weeks for the marriage of his sister's daughter ('bhanji') which is to be solemnized on 21.11.2016. He is the only maternal uncle of the would be bride Pooja. The petitioner is undergoing life imprisonment in case FIR No.434 dated 31.12.2000, registered at Police Station Gharaunda, District Karnal, for the offences punishable under Sections 364, 302, 201, 216, 120-B IPC; besides, under Section 25 of the Arms Act. He was convicted and sentenced by the learned Additional Sessions Judge, Karnal on 17.05.2004. The appeal, i.e. CRA-D No. 592-DB of 2004 filed by him in this Court has since been dismissed.

After verification regarding other male members to perform the marriage ceremonies of the marriage that is to be solemnized, a police report dated 09.11.2016 (Annexure R1) has been submitted. The same is to the effect that the petitioner is the only brother of Krishna, the marriage of whose daughter, namely, Pooja is to be solemnized on 21.11.2016. Therefore, the petitioner is the only maternal uncle of Pooja. In terms of reply dated 05.11.2016, the petitioner has availed of parole on twelve occasions from 20.10.2004 to 31.05.2016. It is not the case of the respondents that the petitioner has ever misused the concession of parole that was granted to him from time to time. The only reason for which parole is now being declined to him is that he has availed of parole in the current calendar year of 2016 from 31.05.2016 to 29.06.2016 for the admission of his children. This is being denied on the ground that Rule 11 (3) of the Rules provides that under section 3 (2) (b) a convict shall be

granted parole only for once either under section 3 (1) (b) or section 3 (1) (d) and not for both separately during the calendar year except as provided under rule 8. Rule 11 relates to 'Bonds' and sub-rule (3) thereof reads as under:-

“(3) Under section 3 (2) (b) a convict shall be granted parole only for once either under section 3 (1) (b) or section 3 (1) (d) and not for both separately during the calendar year except as provided under rule 8 as above.”

Sections 3 (1) (b), 3 (1) (d) and 3 (2) (b) of the Act may also be noticed which read as under:-

“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 Gazetted 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) xxxx
- (b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or
- (c) xxxx

(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) xxxx

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; or

(c) xxxx

A perusal of above Section 3 (1) (b) of the Act shows that a prisoner is entitled for consideration of release by the State Government in consultation with the District Magistrate or any other officer appointed in this behalf, if the State Government is satisfied that the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated. Therefore, for the marriage of sister's daughter, which is the position in the present case, is one of the conditions on which a prisoner is entitled for consideration for temporary release on parole. In terms of Section 3 (1) (d) of the Act, a prisoner is entitled for temporary release if it is desirable to do so for any other sufficient cause. In terms of Section 3 (2) (b) of the Act, the period for which a prisoner may be released is to be determined by the State Government so as not to exceed four weeks in a case where the prisoner is to be released on the ground specified under clause (b) or (d) of sub-section

(1) of Section 3 of the Act.

Rule 8 of the Rules provides for 'sufficient cause' and the same reads as under:-

“8. Sufficient cause [Sections 3 (1)(d) and 10 (2) (d)] –

Under Section 3 (1) (d) “sufficient cause” may be considered from amongst the following reasons,
namely:-

- (i) admission in school/colleges/professional institutions of the dependents of the convicts;
- (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.” (emphasis added)

A perusal of the above Rule 8 of the Rules shows that in terms of Section 3 (1) (d) of the Act, “sufficient cause” may be considered from amongst the reasons as mentioned therein. The reasons that are mentioned are, therefore, in the nature of guidelines which is evident from the fact that it is stated that sufficient cause may be considered from amongst the said reasons as mentioned therein. As such, it cannot be said that there can be no other sufficient cause apart from those that are mentioned in Rule 8.

In the circumstances, the restriction placed by Rule 11 (3) of the Rules would be inapplicable where a 'sufficient cause' is otherwise made out. The restriction for subsequent release on parole in the same calendar year which is urged is that the petitioner has availed of parole in this calendar year. The same, however, would be inapplicable where there is 'sufficient cause', otherwise than that enumerated in Rule 8 of the Rules. This is for the reason that 'sufficient cause' in Rule 8 may be considered from amongst the reasons that are mentioned therein and it is not that other reasons provided for under the Act would not constitute 'sufficient cause'. Therefore, the restriction that is sought to be canvassed for declining parole to the petitioner based on Rule 11 (3) of the Rules that he has already availed parole in the current calendar year would be inapplicable.

This Court in **Satyavart v. State of Haryana, 1997 (3) RCR (Criminal) 672**, which was a case under the Act, held that restriction could not be imposed by executive instructions for seeking second parole. Besides, in **Kirpal Singh v. State of Haryana, 1997 (3) RCR (Criminal) 735**, in a case also under the Act, this Court held that where the petitioner in the said case had already been granted two weeks' parole and shortly after which he was seeking second parole to attend the marriage of his sister's son, the second parole could not be refused and that there was no restriction in the number of times to grant parole. The only restriction was that the total period should not exceed four weeks.

In the circumstances, the criminal writ petition is allowed and the petitioner, on his furnishing personal and surety bonds to the

satisfaction of the competent authority under the Act, shall be temporarily released on parole for a period of four weeks commencing from the date of his release. The Superintendent, District Jail, Karnal (respondent No. 3) shall specify the date on which the petitioner is to surrender in jail after the expiry of the period of his parole.

(S.S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

17.11.2016
Ramesh

Note:

1.	Whether reasoned/speaking	:	Yes
2.	Whether reportable	:	Yes