

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

CRWP No. 1432 of 2016
Date of decision:-22.11.2016

Lakhvir SinghPetitioner
Versus
State of Punjab and othersRespondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mrs. Sarla Chaudhary, Advocate, for the petitioner.

Mr. R.S. Randhawa, Addl. Advocate General, Punjab
for the State.

S.S. SARON, J.

Learned counsel for the State has filed reply by way of affidavit of Sh. Rajiv Kumar Arora, PPS Superintendent, Borstal Jail, Ludhiana on behalf of respondents No. 1 and 3. The reply is taken on record.

Heard learned counsel for the parties.

The criminal writ petition has been filed by Lakhvir Singh @ Lakhi, petitioner seeking emergency parole for the marriage of his real elder brother, which is to be solemnized on 27.11.2016. The petitioner has been convicted in case FIR No. 41 dated 02.07.2008 registered at Police Station Behram, District Nawanshahr for the offence punishable under Section 302 of the Indian Penal Code ('IPC'- for short). He remained as an under trial prisoner for nine months and five days then he was released on bail by the learned Chief Judicial Magistrate on 19.05.2009. He was then convicted by the Juvenile Justice Board, Sahid Bahagat Singh Nagar. His conviction was upheld

by the learned Sessions Judge on 15.06.2016. He has been sent to the 'Observation Home' for a period of three years, where he is at present confined.

The marriage of the real brother of the petitioner is to be solemnized on 27.11.2016. The mother of the petitioner namely Sukhwinder Kaur wife of Mehanga Singh filed an application (Annexure P-1) on 01.11.2016 addressed to the Superintendent, Borstal Jail, Ludhiana for grant of parole to her son i.e. the petitioner for 15 days. The marriage card (Annexure P-2) regarding marriage of Kulbir Singh Jallan, the elder brother of the petitioner, has been placed on record.

In the reply that has been filed, it is submitted that the petitioner has remained confined at the 'Observation Home' for one year, two months and seven days including the period as an under trial confinement. It is submitted that there is no other case pending against him. His conduct has been stated to be satisfactory. It is submitted that the request received from Smt. Sukhwinder Kaur, mother of the juvenile, was considered and rejected. In fact according to the respondent, in terms of para 753 of the Jail Manual (Annexure R-3), the Superintendent Jail has no power or authority to grant emergency parole or leave in case of any juvenile prisoner.

We have given out thoughtful consideration to the matter.

It is not in dispute that the marriage of the real elder brother of the petitioner is to be solemnized on 27.11.2016. The petitioner being a juvenile, his case for leave of absence from the 'Observation Home' is liable to be considered by the 'Board' constituted under Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('Act'- for short) or the

'Committee' constituted under Section 29 of the Act. The procedure for leave of absence of a juvenile or child is provided for under Rule 62 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ('Rules'- for short). The said Rule reads as under:-

“62. Leave of absence of a juvenile or child.—

(1) A juvenile or child in an institution may be allowed to go on leave of absence or released under supervision for examination or admission, special occasions like marriage or emergencies like death or accident or serious illness in the family.

(2) While the leave of absence for short period generally not exceeding seven days excluding the journey time may be recommended by the Officer-in-charge, but granting of such leave shall be by the Board or Committee.

(2) The parents or guardian of the juvenile or the Officer-in-charge on behalf of the juvenile or child may submit an application to the Board or Committee requesting for relieving the juvenile or child on leave, stating clearly the purpose for the leave and the period of leave.

(3) While considering the application of leave of absence, the Board or Committee shall hear the juvenile or child or the parents or guardians of the juvenile or child and if the Board or Committee considers that granting of such leave is in the

interest of the juvenile or child, appropriate order shall be made and the Board or Committee may call for a report from the probation officer or child welfare officer in case the preliminary information gathered from the juvenile or child or concerned parent or guardian is not sufficient for the purpose.

(4) While issuing orders sanctioning the leave of absence or relieving under supervision, as the case may be, the competent authority shall mention the period of leave and the conditions attached to the leave order, and if any of these conditions are not complied with during the leave period, the juvenile or child may be called back to the institution.

(5) The parent or guardian shall arrange to escort the juvenile or child from and to the institution and where this is not possible, the Officer-in-charge may arrange to escort the juvenile or child to the place of the family and back. In case the parents or guardian is willing to arrange escort but does not have requisite financial means, the Officer-in-charge shall arrange for the traveling expenses as admissible under the rules.

(6) If the juvenile or child runs away from the family during the leave period, the parent or guardian is required to inform the Officer-in-charge of the institution immediately, and try to trace the

juvenile or child and if found, the juvenile or child shall be brought back to the institution immediately.

(7) If the juvenile or child is not found within twenty four hours, the Officer-in-Charge shall report the matter to the nearest police station and missing person's bureau, but no adverse disciplinary action shall be taken against the juvenile or child and procedure laid down under the Act shall be followed.

(8) If the parent or guardian does not take proper care of the juvenile or child during the leave period or does not bring the juvenile or child back to the institution within the stipulated period, such leave may be refused on later occasions.

(9) If the juvenile or child does not return to the institution on expiry of the sanctioned leave, the Board or Committee shall refer the case to police for taking charge of the juvenile and bring him back to the institution.

(10) The period of such leave shall be counted as a part of the period of stay in the institution and the time which elapses after the failure of a juvenile to return to the institution within the stipulated period, shall be excluded while computing the period of his stay in the institution.”

Therefore, the petitioner in fact was liable to apply in terms of the above Rule 62 of the Rules and his application for leave was to be considered by the 'Board' or 'Committee' after recommendation by the officer in charge of the 'Observation Home'. 'Board' has been defined in Section 2 (c) of the Act to mean a Juvenile Justice Board constituted under Section 4. 'Committee' has been defined in Section 2 (f) of the Act to mean a Child Welfare Committee constituted under Section 29. The leave of absence was to be granted by the 'Board' or 'Committee'. However, the above procedure has not been followed and the Superintendent Borstal Jail, Ludhiana declined the application only on the ground that he did not have the power to grant parole. The reference placed to Para 753 of the Punjab Jail Manual is in fact out of context as Rule 62 of the Rules was liable to be followed.

Keeping in view the fact that the marriage of elder brother the petitioner is now to be solemnized on 27.11.2016 and there are holidays on 24th, 25th and 26th November, 2016, it would be just and expedient that necessary leave of absence from the 'Observation Home' is granted to the petitioner subject to his furnishing necessary surety to the satisfaction of the Principal Magistrate of the Juvenile Justice Board/Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar.

Accordingly, the criminal writ petition is allowed and the petitioner Lakhvir Singh is granted fifteen days leave of absence from the 'Observation Home', which shall be counted from the date of his release, subject to his furnishing necessary surety to the satisfaction of the Principal Magistrate of the Juvenile Justice Board/Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar for his return to the 'Observation Home', after expiry of

fifteen days. The learned Principal Magistrate of the Juvenile Justice Board/Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar shall specify the date after expiry of fifteen days leave of absence from the 'Observation Home' to be counted from the date of release of the petitioner on which he is to return.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

22.11.2016
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Note:

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No