

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CrWP No.1453 of 2016
Date of decision: 29.11.2016

Pankaj son of Dilbag Singh

.... Petitioner

Versus

State of Haryana & Others

.... Respondents

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mrs. Justice Lisa Gill.

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

S.S. Saron, J.

The petition has been filed by the petitioner Pankaj seeking quashing of the order dated 25.10.2016 (Annexure P-1) passed by the Superintendent District Jail, Rohtak (respondent No.3) whereby emergency parole prayed for by the petitioner has been declined on the ground that the petitioner is not entitled to parole in view of the provisions of Rule 4 (2) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 ('Temporary Release Rules' - for short). The said Rule 4 (2) of the Temporary Release Rules envisages that a prisoner who has been convicted and sentenced for imprisonment less than four years, shall not be eligible for parole.

Reply by way of affidavit of Sh. Daya Nand, Superintendent, District Jail, Rohtak has been filed in Court today. The same is taken on record.

We have heard learned counsel appearing for the parties and given our thoughtful consideration to the matter.

The petitioner was convicted by the Juvenile Justice Board, Rohtak in case FIR No.650 dated 23.11.2011 registered at Police Station Civil Lines, Rohtak for the offence punishable under Section 304 Part-II Indian Penal Code. He was sent to the Observation Home, Ambala. At present he is confined in District Jail, Rohtak where he was admitted on 15.7.2015 after his transfer from Observation Home, Ambala by an order passed by the learned Sessions Judge, Ambala. The petitioner remained as an under trial prisoner from 9.12.2011 to 7.7.2012. There is no other case pending against him.

An enquiry regarding the fact of the marriage of Sumit who is the real brother of the petitioner was got conducted by the Superintendent, District Jail, Rohtak (respondent No.3) through Sh. Jai Bhagwan, Warder, Belt No.2035 of the Jail on 28.11.2016 from Prem Nagar, Rohtak i.e. the residence of the petitioner. In the enquiry, the family members of the petitioner, neighbours and respected persons of Prem Nagar, Rohtak informed in writing that the marriage of Sumit, real brother of the petitioner is to be solemnized on 5.12.2016 with Mamta daughter of Krishan. Smt. Sunita Devi, mother of the petitioner also gave a writing that the marriage of his son is to be solemnized on 5.12.2016.

As already noticed, the prayer of the petitioner for his temporary release on parole has been declined in view of Rule 4 (2) of the Temporary Release Rules. The said Rule reads as under:-

“A prisoner who has been convicted and sentenced for imprisonment less than four years, shall not be eligible for parole.”

It may, however, be noticed that the petitioner has been convicted by the Juvenile Justice Board. In respect of a conviction by a Juvenile Justice Board, the case of the petitioner for leave of absence is 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 ('Juvenile Rules' – for short) which 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.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) 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.
- (7) 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.

- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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."

This aspect has been considered by this Court in Lakhvir Singh v. State of Punjab and others CrWP No.1432 of 2016 decided on 22.11.2016. The petitioner in fact was liable to apply in terms of above Rule 62 of the Juvenile 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'. However, the said procedure has not been followed which in fact was liable to be followed. It is well known that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Besides, if a statute has conferred a power to do an Act and has laid down the method in which that power is to be exercised, it prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the Rule has been that is this was not so, the statutory provisions might as well not have been enacted.

The fact that the marriage of the real brother of the petitioner is to be solemnized on 5.12.2016 is not in dispute. Therefore, the procedure provided for under the Juvenile Rules is to be followed for seeking leave of absence from confinement. In view of the said Juvenile Rules being applicable, the provisions of the Temporary Release Rules would be inapplicable. Therefore, the bar for temporary release of the petitioner sought to be invoked in terms of Rule 4 (2) of the Temporary Release Rules would be clearly inapplicable. In terms of Rule 62 of the Juvenile Rules, the petitioner is entitled for leave of absence for celebrating the marriage of his brother.

In the circumstances, the Crl. Writ petition is allowed and the petitioner Pankaj is granted fifteen days leave of absence from the jail

which shall be counted from the date of his release subject to his

furnishing personal bond and necessary surety to the satisfaction of the Principal Magistrate of the Juvenile Justice Board/Chief Judicial Magistrate, Rohtak for his return to the jail after the expiry of his fifteen days of leave. The learned Principal Magistrate of the Juvenile Justice Board/Chief Judicial Magistrate, Rohtak shall specify the date after expiry of fifteen days leave of absence from the jail to be counted from the date of release of the petitioner on which he is to return.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

29.11.2016
amit

Note:-

1. Whether the order is reasoned/speaking : Yes.
2. Whether the order is reportable : Yes.