

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

CRWP No.198 of 2016(O&M)
Date of decision:-12.2.2016

Hafiz

..... Petitioner

VERSUS

State of Haryana and ors.

..... Respondents

CORAM: **HON'BLE MR. JUSTICE S.S. SARON**
HON'BLE MR. JUSTICE GURMIT RAM

Present: **Mr. Rajiv Dhawan, Advocate**
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

S.S. SARON, J.

CRM-W-48 of 2016

The panchayat certificate (Annexure P-1) attached with the criminal miscellaneous application is taken on record subject to just exceptions.

The criminal miscellaneous application stands disposed of accordingly.

CRWP No.198 of 2016

Learned counsel for the State has filed reply by way of affidavit of Sh.Sher Singh, Superintendent of Prison, District Prison, Karnal on behalf of respondents No.1 to 3. The same is taken on record.

Heard learned counsel for the parties.

Criminal writ petition has been filed by the petitioner for directing Superintendent, District Jail, Karnal (respondent No.3) to grant him parole for four weeks' in terms of Section 3(b) of The Haryana Good

Conduct Prisoners (Temporary Release) Act, 1988 ('*the Act*' – for short) so as to enable him to prepare, organize and also attend the marriage of his son Aashif which is to be performed on 14.2.2016.

The petitioner has been convicted by the learned Sessions Judge, Karnal on 6.6.2015 in case FIR No.364 dated 14.12.2013 registered at Police Station Madhuban, District Karnal for the offences under Sections 302/201/365 read with Section 34 of Indian Penal Code ('*IPC*' – for short). He has been sentenced to undergo imprisonment for life, besides, pay a fine of Rs.5,000/- and in default thereof undergo rigorous imprisonment for a period of one year and six months. The petitioner is undergoing his life imprisonment. Aggrieved against his conviction and sentence, he has filed CRA-D-1337-DB of 2015 titled Hafiz Versus State of Haryana which is pending in this Court. The petitioner is in custody since 19.12.2013 and has completed more than two years in custody after his arrest.

The petitioner filed an application before the Superintendent, District Jail, Karnal (respondent No.3) for grant of four weeks' parole for the marriage of his son. According to the petitioner, Superintendent, District Jail, Karnal (respondent No.3) refused to accept the application stating that he has not completed one year of imprisonment after the conviction, besides, has not earned his first annual good conduct remission under the Act. Therefore, he has approached this Court.

In terms of the reply that has been filed, it is submitted that the petitioner has undergone imprisonment of one year, five months and six days as as undertrial from 30.12.2013 to 5.6.2015. Thereafter, he has undergone eight months and six days of imprisonment after conviction

from 6.6.2015 to 11.2.2016. Therefore, he is not entitled for temporary release on parole in view of Rule 4 (1) of the Haryana Good Conduct Prisoners (Temporary Release), Rules 2007 (*'Rules'* – for short) which have been issued vide notification dated 18.12.2007. The said Rule envisages that a prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the Act. Therefore, it is submitted that the petitioner is not entitled for parole.

We have given our thoughtful consideration to the matter.

Temporary release on parole for prisoners who have been convicted is provided for by the provisions of the Act. Section 3(1)(b) of the Act provides for temporary release of a prisoner on satisfaction of the competent authority that the marriage of the prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated.

In the present case, the marriage of the petitioner's son Aashif is to be celebrated on 14.2.2016. There is no denial in the affidavit that has been filed that the said marriage is not to be celebrated. However, release of parole is sought to be denied to the petitioner on the ground that Rule 4 (1) of the Rules provides that a prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the Act. Admittedly, there is no such restriction under the provisions of the Act. There being no restriction in the Act, the provisions of the Rules cannot supersede the substantive provisions of the Act. The provisions of the Act contain a substantive right for

prisoners for release of prisoners on certain grounds. The marriage of the son of the petitioner is indeed a circumstance which entitles the petitioner for consideration for temporary release on parole. The presence of the father at the time of marriage of his son is even otherwise necessary.

This Court in ***Mahavir Versus State of Haryana and others, 2012(2) RCR(Criminal)230*** has held that emergency parole can be granted to a convict in various circumstances over which he has no control, that is, death or fixation of marriage besides rules cannot override the provisions of the Act. A Division Bench of this Court in ***Gurpreet Singh Versus State of Punjab and another, 2012(3) RCR (Criminal) 504*** considered a case under The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 which is *para materia* with the provisions of the Act. In the said case the prisoner immediately after his conviction applied for four weeks emergency parole on account of illness of his mother who was advised an operation. It was held that the emergency parole under Section 3(1)(a) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 and proviso to Rule 3(2) of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 which provided that no such application shall be processed by the Superintendent of Jail, unless the prisoner had maintained good conduct after his conviction at least for four months in jail was held to be a procedural provision. It was directory in nature and not mandatory and the provisions of the Act are substantive provision which would prevail over the procedural provisions of the Rules. Even though, the temporary release on parole is a concession but a prisoner has a right for consideration for temporary release which cannot be curtailed by the

Rules.

In the circumstances, the criminal writ petition is allowed and the petitioner on his furnishing personal bond and surety to the satisfaction of the District Magistrate, Karnal shall be released on parole for a period of four weeks as provided for by Section 3(2)(b) of Act, which period shall be counted from the date of his release.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

12.2.2016
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