

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

**CRWP No.496 of 2016 (O&M)
Date of decision:19.04.2016**

Sitender @ Sikender & others

... Petitioners

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.S. Dhull, Advocate for the petitioners.
Mr. Deepak Grewal, DAG, Haryana.
...

TEJINDER SINGH DHINDSA, J.

The present petition has been preferred under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. for issuance of directions to the respondents for grant of temporary parole for a period of three weeks to enable the petitioners to attend the final rites of Ram Kumar who is a relative of the petitioners and who expired on 04/05.04.2016.

Notice of motion was issued in the present petition on 12.04.2016.

Learned State counsel on instructions from Sh. Jagat Singh, Belt No.1079, Warden, District Jail, Jind has confirmed the factual position that the petitioners herein stand convicted for offence under Sections 323/325/148/149 IPC and were sentenced to undergo three years rigorous imprisonment and are presently lodged in District Jail, Jind.

Learned State counsel has further confirmed the fact that Ram Kumar S/o Ram Swaroop, who was also convicted along with the present petitioners died in General Hospital, Jind on the intervening night of 04/05.04.2016. It has further been confirmed that the deceased Ram Kumar was the uncle of petitioners No.1 and 2, father of petitioner No.3 and

brother of petitioner No.4.

Placed on record are four office orders carrying even date i.e. 08.04.2016 passed by the Superintendent Jail, Jind at Annexures P-2 to P-5 wherein the request for grant of emergency parole of the petitioners herein has been declined on the ground that under Rule 4(2) of the Haryana Good Conduct (Temporary Release) Rules, 2007, the conviction is for a period of less than four years and as such the petitioners are not eligible for grant of emergency parole.

Having heard counsel for the parties, this Court is of the considered view that the impugned orders dated 08.04.2016 at Annexures P-2 to P-5 passed by the Superintendent Jail, Jind cannot sustain.

Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 reads in the following terms:

“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 Gazette 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) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

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

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(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) Where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

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

(c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks:

Provided that the temporary release under clause (c) can be availed more than one during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all or any other ground specified there under.”

In terms of Section 3, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. Temporary release under Section 3 of the Act can also be considered on the ground of marriage of the prisoner himself or close relative under Section 3(b). Temporary release may also be considered “**for any other sufficient cause**” under Section 3(d).

The restriction of conviction being less than four years and petitioners being ineligible for temporary release has been imposed by way of rules and which cannot supersede the substantive provisions of the Act i.e. the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988.

Precisely, this very issue came up for consideration before a Division Bench of this Court in ***Deepak Vs. State of Haryana & another, 2014 (4) RCR (Criminal) 531*** and it was held as follows:

“5. We have given our thoughtful consideration to the

matter. It may be noticed that in terms of Section 3(1)(a) of the Act, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was published in the Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act.”

Similar view has also been taken by a Division Bench of this Court in a recent judgment dated 05.09.2014 rendered in **CRWP No.1293 of 2014 titled as Rakesh Vs. State of Haryana & others.**

Following the dictum laid down by this Court in the judgments noticed herein above, the impugned orders dated 08.04.2016 at Annexures P-2 to P-5 are set aside.

Directions are accordingly issued to the Competent Authority i.e. the Superintendent Jail, Jind to consider the prayer of the petitioners seeking emergency parole as per their applications already submitted strictly on merits and without adverting to the bar contained in Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007.

A fresh order be passed within a period of three days from today.

Disposed of accordingly.

A copy of this order be furnished to learned counsel for the parties under the signatures of the Bench Secretary for necessary compliance.

19.04.2016

**(TEJINDER SINGH DHINDSA)
JUDGE**