
Surajmal versus State of Haryana and others

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

Mr. Apoorav Garg, DAG, Haryana.

Learned counsel for the State has filed a short reply to the petition by way of affidavit of Sh. Dayanand, Superintendent, District Jail, Rohtak. The same is taken on record.

Heard, learned counsel for the parties.

The petitioner has been convicted by the learned Sessions Judge, Rohtak on 22.9.2015 in case FIR No.500 dated 2.12.2014 for the commission of offences punishable under Sections 302 and 449 Indian Penal Code ('IPC' – for short); besides, Section 25 of the Arms Act registered at Police Station Sadar Rohtak. At present he is undergoing his life imprisonment. Crl. Appeal No.1539-DB of 2015 is pending in this Court. He seeks his temporary release so as to attend the 'thervin'/last rites ceremony of his mother who died on 29.06.2016. The ceremony is fixed for 14.07.2016.

In terms of reply that has been filed, it is submitted that the petitioner stands convicted. A reference has been made by the learned counsel for the State to Rule 4 (1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules 2007 ('2007 Rules' - for short), which reads as under:-

“4. Eligibility. [section 10 (2) (d)].- (1) A prisoner shall be entitled to apply for parole only after he has

completed one year of his imprisonment after conviction and has earned his first annual good conduct remission under the Act.

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

By referring to above Rule 4 (1) of the 2007 Rules, it is submitted that the petitioner is not entitled for temporary release as he has not completed one year of imprisonment after his conviction on 22.9.2015 and has also not earned his First Annual Good Conduct Remission under the Act i.e. the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('1988 Act' – for short).

We have given our thoughtful consideration to the matter, it is not in dispute that the mother of the petitioner has died on 19.7.2016 and her 'thervin'/last rites ceremony is fixed on 14.7.2016. In reply filed by Sh. Dayanand, Superintendent, District Jail, Rohtak, it is stated that an inquiry regarding the fact of the death of petitioner's mother and 'thervin'/last rites ceremony was got done and verified by the office of Superintendent, District Jail, Rohtak. During the inquiry, the family members of the petitioner, respected persons of village Mayna and Smt. Monika, Sarpanch of Gram Panchayat village Mayna informed and gave in writing that the petitioner's mother namely Ramo Devi wife of Sh. Amir Singh had died on 29.6.2016 and her 'thervin'/last rites ceremony is to be performed on 14.7.2016.

The question therefore that requires consideration is

whether the petitioner in view of Rule 4 (1) of the 2007 Rules as referred to above is entitled for temporary release on parole in accordance with the provisions of the 1988 Act. Section 3 of 1988 Act relates to temporary release on parole. Section 3 (1) (a) of the 1988 Act which is applicable in the present case, reads 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 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.

The above provision provides for temporary release of prisoners on certain grounds. It is envisaged that the State Government may, in consultation with the District Magistrate or any other officer appointed on his 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 member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill. In terms of sub-section (2) (a) of Section 3 of the 1988 Act, it is provided that the period for which a prisoner may be released shall be determined by the State

Government so as not to exceed in a case where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks.

The provisions of Section 3 (1) (a) of the 1988 Act are substantive provisions of the Act while Rule 4 of 2007 Rules has been framed in exercise of delegated powers conferred by Section 10 (2) (d) of the Act i.e. relating to powers to make rules for carrying out the purpose of the 1988 Act and in particular, and without prejudice to the generality of foregoing powers, such Rules may provide for the condition on which and the manner in which prisoners may be released temporarily under the 1988 Act. The rule making powers conferred by Section 10 (2) (d) of the 1988 Act only provides for the conditions and the manner in which prisoners may be released on temporary basis under the Act. The right of a prisoner for being released on temporary basis or in any case for consideration for release cannot be curtailed by the 2007 Rules. Therefore, we are of the view that the provisions of 2007 Rules would not supersede the substantive provisions of 1988 Act, especially in a case where the release of the petitioner is sought immediately so as to attend the 'thervin'/last rites ceremony of his mother, which is fixed for 14.07.2016.

Even otherwise, the petitioner has undergone actual imprisonment of one year, seven months and five days as on 10.07.2016 although after conviction he has undergone imprisonment of 9 months and 18 days only.

According to learned counsel for the State, the petitioner is involved in two other cases i.e. FIR No. 91 of 1999 registered at Police Station Sadar Rohtak for the offence under Section 25 of the Arms Act as also case FIR No. 95 of 2014 registered at Police Station City Rohtak for the offences under Sections 148, 149, 323 and 506 IPC. It is submitted that the petitioner is not on bail in the former case although he is on bail in the later case.

In this view of the matter, learned counsel for the petitioner submits that he shall apply for bail in the said case.

In the above circumstances, to enable the petitioner to attend 'thervin'/last rites ceremony of his mother, it would be just and expedient to allow the petitioner temporary release in the present case in which he is undergoing life imprisonment.

Accordingly, the writ petition is allowed and the petitioner on his furnishing personal bonds and surety to the satisfaction of District Magistrate/Deputy Commissioner, Rohtak (respondent No. 3) shall be released on temporary basis for a period of one week from the date of his release, which shall, however, be subject to his getting bail in case FIR No. 91 of 1999 registered Police Station Sadar Rohtak for the offence under Section 25 of Arms Act.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

July 12, 2016
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