

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-12518-2017

Date of decision: 14.04.2017

Mukhtiar Singh

....Petitioner

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.J.P.Singh, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Petition has been filed under Section 482 Cr.P.C., for issuance of direction to the respondents to release the petitioner for a period of 15 days, for making the necessary arrangements of marriage of his daughter, namely, Harjit Kaur, which is fixed for 18.04.2017.

It is the case of the petitioner that on account of conviction dated 11.08.2015 under Section 138 of the Negotiable Instruments Act, which has been upheld in CRR-584-2017 on 20.02.2017 (Annexure P3), he is in custody. He had surrendered since his appeal had been earlier dismissed on 01.02.2017 (Annexure P2). It has been averred that his daughter's marriage was already fixed for 28.03.2017 but due to financial constraints and the non-release of the petitioner, it was postponed to 18.04.2017. The copy of wedding invitation card and the certificate of the Panchayat, are also annexed as Annexures P4 & P5, respectively. While dismissing the revision petition, liberty had been granted to the petitioner to file appropriate application seeking interim bail by this Court. Resultantly, this Court has been approached.

In the written statement filed by the Superintendent Sub Jail

Moga, the defence taken is that under Rule 3(2) the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963, as per the proviso, no application shall be processed by the Superintendent of Jail, unless the prisoner had maintained good conduct after his conviction at least for 4 months in Jail. The said respondent has also verified the fact that the marriage is fixed for 18.04.2017 and a certificate has also been filed to that effect. Thus, the defence of the State is only that since he had surrendered on 01.02.2017 and the period of 4 months has not expired, therefore, he is not entitled for the grant of interim release to attend the marriage.

Section 3(1) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 provides that in case of marriage of the prisoner's son or daughter is to be celebrated, then he can be released for a period of 4 weeks, subject to the State Government's satisfaction. The period which is specified in such cases under Section 3(2)(b) is 4 weeks. The only hitch in this case is that the proviso under the rules provide that there should be custody of at least 4 months before the application can be processed, which, in the present case, would be only in June.

As noticed, the marriage is already fixed and therefore, counsel for the petitioner is well justified in placing reliance upon the judgment in CRWP-2612-2011 titled *Gurmukh Singh Vs. State of Haryana*, decided on 09.12.2011, whereby in the case of nephew's

marriage, it was held that the rules cannot override the provisions of the Act and the State was not justified in declining the parole to the petitioner on the ground that he had not completed the requisite period of one year of his imprisonment. Accordingly, direction had been issued to reconsider the case of the petitioner for grant of parole, without invoking the said rule.

Normally this Court would also issue such directions for fresh decision but in view of the fact that the wedding is now slated for 18.04.2017 and there is no such time for reconsideration, this Court is of the opinion that the said denial would cause extreme prejudice to the petitioner and accordingly, sufficient cause, as such, is shown, which is also one of the grounds under Section 3(1)(d) for grant of temporary release.

Resultantly, the present petition is allowed and a direction is issued to respondent No.2 to release the petitioner for a period of 2 weeks, commencing from 15.04.2017, subject to furnishing of adequate surety, to the satisfaction of the competent authority. The petitioner shall surrender on 28.04.2017 at 10 am before respondent No.2.

Photocopy of this order be supplied to the counsel for the parties, under the signatures of Special Secretary of this Court.

14.04.2017

(G.S. SANDHAWALIA)*Sailesh***JUDGE***Whether speaking/reasoned:**Yes/No**Whether Reportable:**Yes/No*