

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

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2017.10.12 16:55
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CRWP-1197-2017 (O&M)
Date of decision:12.10.2017

Chota Ram @ Chhota Ram s/o Garib Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.S.S.Sahu, Advocate, for the petitioner.

Mr. C.L.Pawar, Sr. DAG, Punjab

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of six weeks' parole on account of marriage of son of the petitioner, namely, Gurdip Singh, which is fixed for 15.10.2017.

The Superintendent, District Jail, Sangrur, vide its order dated 03.10.2017, has declined the prayer of the petitioner for grant of six weeks' parole on the ground that there is no such provision under the Punjab Goods Conduct Prisoners (Temporary Release) Amendment Act, 2015.

Reply by way of affidavit of Hardeep Singh, PPS, Superintendent, District Jail, Sangrur, on behalf of respondent Nos.1 and 2 has been filed in Court today and the same is taken on record.

In reply, it is submitted that on 17.05.2017, an FIR No. 284, dated 31.08.2017, under Section 52-A of Prison Act, P.S. City Sangrur, was registered against the petitioner for committing an offence in the jail. It is also submitted that on verification regarding the marriage of the son of the petitioner, SHO, PS Moonak has submitted a report that the marriage of the son of the petitioner is fixed for 15.10.2017 and there is no apprehension of breach of peace and tranquility, if the petitioner is released on parole (copy of report of SHO, PS Moonak, is attached herewith as Annexure R-1).

Learned counsel for the petitioner has relied upon the judgment passed in Vijay Kumar Sharma Vs. State of Punjab and another 2012 (3) RCR (Criminal) 409, wherein, in identical circumstances, the parole was granted to a convict on account of marriage of his son. The operative part of the judgment reads as under:-

“9. After giving thoughtful consideration to the rival contentions and also in view of the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the present petition deserves to be allowed. The relevant provisions of law under which the petitioner is claiming to be released on parole provided under Section 3 of the Act of 1962, read as under:-

"Temporary release of prisoners on certain grounds.-

(1) The State Government may, in consultation with the District Magistrate 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

(b) the marriage of the prisoner'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 any other land cultivated by him] and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or

(d) it is desirable so to do 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 ground specified in clause (a) of sub-section (1), two 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 ground specified in clause (c) of sub-section (1), six weeks

((2-A)] Notwithstanding anything contained in sub-section (2), where a prisoner undergoing a to sentence of life imprisonment, is to be released on the ground specified in clause (d) of sub-section

(1), he may be released for a period of six months or less in parts, during the five years.]

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

(4) The State Government may by notification authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein.

10. It is pertinent to note here that proviso to sub-rule (2). of Rule 3 of the Rules of 1963 came to be added vide notification dated 23.9.2003 (Annexure R-1). Relevant part of Rule 3 of Rules of 1963 reads as under:

3. "Procedure for temporary release. [Sections 3, 4, 10(1), 10(2) (b), 10 (2)(d) and 10(2)(e)]. - (1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act shall make an application in Form A-1 or Form A-2, as the case may be, to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoner's family.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who, after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the Inspector General. The Inspector-General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the Security of State or prejudicial to the maintenance of public order.

[Provided that no such application shall be processed by the Superintendent of Jail, unless the prisoners had maintained good conduct after his conviction at

least for four months in jail.]"

11. Learned counsel for the petitioner vehemently contended that once the respondents are not disputing any of the factual aspects of the matter including the marriage of the son of the petitioner scheduled to be held on 24.4.2012 vide Annexure P-3, the Panchayatnama (Annexure P-2) and the representation submitted by the petitioner vide Annexure P-1, the proviso to sub-rule (2) of Rule 3 of the Rules of 1963 would not come in the way of the petitioner. Learned counsel for the petitioner further submits that Rule 3 including the proviso to sub-rule 2 thereof is only the procedural provision which must give way to the substantive provisions of Section 3 of the Act of 1962.

12. Concluding her arguments, learned counsel for the petitioner has also placed reliance upon the Division Bench judgment of this Court in ***criminal writ petition No. 2019 of 2011 titled as Gurpreet Singh v. State of Punjab and another decided on 31.10.2011.***

13. So far as the relevant facts of the case that, petitioner is undergoing sentence in Central Jail, Ferozepur, after dismissal of his appeal by the learned Sessions Judge, Ferozepur, vide judgment dated 5.3.2012; marriage of the son of the petitioner is scheduled to be solemnised on 24.4.2012, as per the marriage card (Annexure P- 3), Panchayatnama (Annexure P-2), issued by the Municipal Councillor, recommending release of the petitioner on emergency parole and the representation dated 10.3.2012 moved by the petitioner vide Annexure P-1, are not in dispute as per the reply filed by the respondents. The only ground on the basis of which the respondents have expressed their inability to consider the request of the petitioner for his release on emergency parole, is that the petitioner does not meet the requirement under proviso to sub-rule (2) of Rule 3 of the Rules of 1963 which envisages that no such application shall be processed by the Superintendent of Jail, unless prisoner is maintaining good conduct after his conviction at least for four months in jail.

14. Having heard the learned counsel for the parties and after careful perusal of the provisions of law, noted above, this Court is of the view that the stand taken by the respondents is wholly misplaced. I say so because the object of the Act of 1962, to provide for temporary release to the prisoners in the case of certain eventualities would stand defeated in case the procedural provisions under the proviso to sub-rule (2) of Rule 3 of the Rules of 1963 are permitted to prevail upon the substantive provisions of Section 3 of the Act of 1962. Further, it is the settled proposition of law that the rules of procedure are the handmaids of justice and are to be followed for advancing the cause of justice.

15. The view taken by this court also finds support from the

Division Bench judgment of this Court decided on 31.10.2011, in criminal writ petition No. 2019 of 2011.

16. The relevant observations made by the Division Bench, which can be gainfully referred, read as under:

"However, temporary release on parole has been declined to the petitioner in view of the proviso to sub-rule (2) of rule 3 of the Rules. Rule 3 of the Rules provides the procedure for temporary release and it envisages the procedure to be followed and the application form to be filled in by a prisoner for temporary release as also the steps to be taken by Superintendent of Jail for forwarding the application. The proviso to sub-rule (2) of rule 3 of the Rules was inserted by a notification dated 23.9.2003 and it envisages that no such application shall be processed by the Superintendent of Jail, unless the prisoner has maintained good conduct after his conviction at least for four months in jail. The provision of rule 3 of the Rules are procedural provisions, which are directory and not mandatory. The provisions of Section 3(1)(a) of the Act, however, are substantive provisions which would prevail over the procedural provisions of the Rules.

The object of Section 3 of the Act is to provide for temporary release to prisoners in case of certain eventualities which are that (a) a member of the prisoner's family had died or is seriously ill; or (b) the marriage of the prisoner'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 any other land cultivated by him] and no friend of the prisoner or member of the prisoner's family is prepared to help him in this behalf in his absence; (d) it is desirable for any other sufficient cause.

We are even otherwise of the view that the proviso added to sub-rule (2) of rule 3 of the Rules would not supersede the substantive provisions of the Act specially in a case where the release of the petitioner is sought immediately so as to enable him to arrange for the treatment for his mother."

17. In view of what has been discussed above and following the golden rule of interpretation, this Court has no hesitation to hold that the harmonious construction of proviso to sub-rule (2) of Rule 3 of the Rules of 1963 is that it will not stand in the way of achieving the object envisaged under the substantive provisions of Section 3 of the Act of 1962. Wherever the substantive and procedural provisions are found pitted against each other and in case the procedural provisions are allowed to

prevail upon the substantive provisions, the very object of the Act shall stand defeated. This can never be the legislative intent while framing the statute. Otherwise also, such bottlenecks cannot be allowed to stand in the way to achieve the purpose and object of the Act of 1962.

18. Resultantly, I unhesitatingly conclude that proviso added to sub-rule (2) of Rule 3 of the Rules of 1963, inserted vide notification dated 23.9.2003, would not supersede the substantive provisions of the Act of 1962, particularly in a situation like the one in the present case where the petitioner is seeking the release on emergency parole enabling him to arrange and attend the marriage of his son.

19. Keeping in view the totality of the facts and circumstances of the present case, coupled with the reasons aforementioned, it is held that release of the petitioner on emergency parole cannot be denied solely on the basis proviso to sub-rule (2) of Rule 3 of the Rules of 1963. In case, the waiting period of four months after conviction is to be completed as envisaged under the proviso added to sub rule (2) of Rule 3 of the Rules of 1963, as the stand taken by the respondents in the instant case, it will defeat the very object of the Act of 1962 and the legislative intent behind it. Having said that, it is held without any hesitation that the substantive provisions of the Act of 1962 cannot be permitted to be circumvented by the rules of procedure.

20. In view of the above, the present petition deserves to be accepted and, therefore, it is allowed. The respondents are directed to consider and dispose of the representation dated 10.3.2012, submitted by the petitioner vide Annexure P-1, de-hors the proviso to sub-rule (2) of Rule 3 of the Rules of 1963."

Since, in the affidavit of Jail Superintendent, which is duly supported with the report of SHO, PS Moonak, verifying that the marriage of the son of the petitioner is scheduled for 15.10.2017 and the local police has stated that it has no objection if the convict i.e. petitioner is released for six weeks' parole as there is no apprehension of breach of peace or State security, the petition is allowed. The petitioner be released on parole of six weeks forthwith.

Copy of the order be given under the signature of the Special
Secretary.

(ARVIND SINGH SANGWAN)
JUDGE

12.10.2017
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No