

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

**CRWP NO. 1244 OF 2017
DECIDED ON : 31.10.2017**

Jasbir @ Babbu

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Gurdarshan Singh Sidhu Advocate,
for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has sought direction for his release on parole on the ground that wedding ceremonies of his two nieces is to be held on 03 & 04th November, 2017 under Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013. Further prayer has been made for setting-aside the order dated 17.10.2017 (Annexure P-2), whereby his request for release on parole has been declined.

The petitioner stands convicted under Section 21-C of NDPS Act in FIR No.7 dated 17.01.2015 and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of ₹1,00,000/- and in default thereof to further undergo rigorous imprisonment for a period of one year, by the Additional Sessions Judge. The appeal preferred thereagainst by the

petitioner bearing CRA No. S-1459-SB of 2017 is stated to be pending adjudication before this Court.

The petitioner is stated to be in custody since 11.12.2015. The case of petitioner has been rejected on the ground that he has not completed one year of imprisonment after conviction in terms of Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter referred to as "the Rules of 2007").

Learned counsel for the petitioner contends that the impugned order (Annexure P-2) deserves to be set-aside as the condition of completion of one year of sentence after conviction has been imposed by the respondents through Rules of 2007, whereas there is no such provision in the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as "the Act of 1988"). The Rules cannot override the provisions of the Act.

Learned counsel for the petitioner contends that marriage of two nieces (brother's daughter) of the petitioner is to be held on 3rd and 4th November, 2017 and he may be released on parole for one week. Copy of invitation card has also been annexed with the petition as Annexure P-1.

Learned State counsel, however, contends that case of the petitioner for release of parole has been rightly rejected in view of relevant provision of Rules of 2007 as he has not completed one year of imprisonment after conviction. He,

however, states that it has been verified that the marriage of nieces of the petitioner is to be performed on 3rd and 4th November, 2017.

It would be necessary to set out Section 3 of the Act of 1988 which is reproduced 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 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 prisoners; 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 ground specified in clause (c) of sub section (1) six weeks;

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

4) The State Government may by notification, authorize any officer to exercise its powers under this Section in respect of all or any other ground specified under” :

The Rule 4 (1) of the Rules of 2007 is set out hereunder:-

“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 good conduct remission under the Act.”

It is, thus, obvious that condition of completion of one year of sentence after conviction which has been laid down in Rules of 2007 is nowhere mentioned in the Act of 1988. The case of the petitioner for release on parole to attend the marriage of his brother's daughters would be covered under Section 3(1)(b) (d) of the Act. The Rules cannot override the Act. A **Division Bench** of this Court in the case of "**Deepak v. State of Haryana and another**" **2014 (4) RCR (Criminal) 531**, while interpreting the condition of atleast one year of imprisonment after conviction for eligibility for release on parole imposed by Rule 4 of the Rules of 2007 had held that there being no such restriction in the Act, the Rules cannot supercede the substantive

provisions of Act.

The very objective for the release of convicts on parole is to enable them to maintain their ties with society and to discharge family obligations. This is in consonance with the theory of reformation of convicts to ultimately help them live in peace and harmony after their release from prison as responsible and law abiding citizens of the country.

Consequently, the impugned order (Annexure P-2) is set-aside and the petitioner shall be released on parole on 02.11.2017 at 11:00 AM by the competent authority subject to his furnishing adequate security to its satisfaction and he shall surrender before the Superintendent, District Jail, Sirsa, by 5:00 PM on 09.11.2017.

The petition stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

OCTOBER 31, 2017
shalini

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