

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

(101)

CRWP-1308-2017

Decided on: November 07, 2017.

Anil @ Channis

.... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Balraj Singh Dhull, Advocate, for the petitioner.

M.M.S. BEDI, J (ORAL)

Claiming that marriage of the petitioner is fixed for 12.11.2017, the instant petition under Article 226 of the Constitution of India, has been filed for release on emergency parole for 20 days.

The petitioner has been denied right to be released on parole on the ground that as per the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for short "the Rules"), a prisoner is not entitled to apply for parole before completion of one year imprisonment after conviction and has earned his first annual good conduct remission under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short "the Act").

Notice to Advocate General, Haryana.

On asking of the Court, Ms. Shubhra Singh, Addl. A.G., Haryana, present in the Court, accepts notice. Copy given.

Counsel for the petitioner has submitted that there is no bar for enforcement of the right of parole under Section 3 (1) (b) of the Act which provides that the State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, release temporarily

a prisoner on parole for a specified period, if the State Government is satisfied that marriage of the prisoner himself is to be celebrated. He has submitted that the Act does not provide any condition for grant of such parole.

We have considered the contentions and find that Section 10 of the Act enables the State Government to make rules for carrying out the purposes of the Act. Section 10 (2) (d) of the Act enables the State Government to provide for the conditions on which and the manner in which the prisoner may be released temporarily under the Act. In the exercise of powers under Section 10 (2) (d), the rule of eligibility has been provided in Rule 4 of the Rules which reads as follows:

"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"

Rule 4 is a piece of legislation under the authority vested in the State Government under Section 10 (2) (d) of the Act.

In view of the statutory bar for grant of temporary release prior to the expiry of one year of imprisonment after conviction by earning first annual good conduct remission under the Act, the petitioner is not entitled to be temporarily released.

Counsel for the petitioner has relied upon a decision of this Court in **Baljinder Singh Vs. The State of Punjab and another, 2014 (13) R.C.R. (Criminal) 122** wherein a Division Bench of this Court had granted emergency parole to a convict on the ground of his marriage. The said judgment does not indicate that the convict in the said case had not fulfilled the statutory requirement/eligibility, as such this judgment is not applicable

to the facts of the present case and cannot be treated as a rule of law.

Counsel for the petitioner has also relied upon judgment of **Deepak Vs. State of Haryana and another 2014 (4) R.C.R. (Criminal) 531** wherein the convict was granted parole prior to the period of one year of imprisonment to enable him to look after his seriously ill wife noticing that terms of Section 3 (1) (a) of the Act is not governed by Rule 4 as there is no restriction in the Act and the rules cannot supersede substantive provision of the Act. It appears that provisions of Section 10 (2) (d) of the Act were not brought for consideration before the Division Bench and the relief was granted taking into consideration the peculiar circumstances of the seriousness of the illness of the wife of the convict in that case.

Similar is the circumstances in the judgment cited by counsel for the petitioner in **Rakesh Vs. State of Haryana and others 2015 (1) PLJ (Criminal) 394** wherein the factum of serious illness of the son of convict was considered as a circumstance to release the convict prior to the completion of period of one year of conviction.

Counsel for the petitioner has also placed reliance on **Parveen @ Billa Vs. State of Haryana 2017 (2) R.C.R. (Criminal) 466**. In the said case, the convict had been declined the concession of parole on the ground that he had availed furlough for a period of three weeks prior to seeking his parole in terms of Section 3 (1) (b) of the Act. Taking into consideration the plea of the State that the convict having not completed one year of imprisonment after conviction, it was no doubt observed that Rule 4 (1) invoked by the State to refuse temporary release on parole is a procedural provision and is directory in nature. In those circumstances, the petitioner-convict in that case was permitted the concession of parole to attend the

marriage of the sister's son.

We have considered the judgments cited by counsel for the petitioner.

It has nowhere been laid down as a rule of law that provisions of Rule 4 (1) of the Rules are nullity being in violation of the authority of subordinate legislation provided under Section 10 (2) (d) of the Act. The provisions of Rule 4 (1) providing eligibility condition, have never been set at naught being violative of provisions of the Act or any constitutional provision. No straight-jacket formula can be laid down for applicability or waiver of Rules 4 (1) of the Rules mentioned herein above. However, the power of High Court under Article 226 of Constitution of India is not curtailed to grant any relief in the interest of justice depending on the circumstances of a particular situation.

Taking the peculiar circumstances of the present case into consideration, we find that the petitioner was convicted on 02.03.2017. When his marriage was fixed for 12.11.2017, the order of conviction and his sentence had already come into existence. It was known to the family members of the petitioner and the family members of the girl whose marriage is allegedly fixed with the petitioner for 12.11.2017 that the petitioner would be is in custody having been sentenced to undergo life imprisonment, on the date of marriage.

No person can claim ignorance of law to his benefits. It is statutory provision that the petitioner would be entitled for temporary release only after expiry of one year of conviction after having earned his first annual good remission report.

The petitioner, therefore, does not have a legally enforceable

right to file the present petition under Article 226 of the Constitution of India. Merely because the marriage has been fixed on 12.11.2017, knowing the circumstances of the petitioner, by the family members, ipso facto will not confer any right on the petitioner to be released on parole by superseding the provisions of law.

The petition is thus held not maintainable.

However, taking a lenient view, the only relief which can be granted to the petitioner is that he can be taken in custody for the various ceremonies on 12.11.2017 at village Meoli, District Kaithal.

Counsel for the petitioner has requested that the petitioner may be permitted to marry in custody, in case he cannot be released on parole.

We accept the said alternative request and order that the petitioner will be permitted to marry in custody on 12.11.2017 and he would be taken in custody in the morning around 07:00 A.M. from District Jail Kaithal to his residence i.e. Bhagat Singh Colony, District Kaithal and then to village Meoli, District Kaithal for performance of the various rituals of marriage and would be brought back on the same day to District Jail, Kaithal at 07:00 P.M.

The petition is disposed of with above observations.

(M.M.S. BEDI)
JUDGE

November 07, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No