

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-1410-2017

Date of decision: 05.12.2017

Rajesh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Trikha, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of emergency parole for 04 weeks on account of marriage of sister (bua's daughter) of the petitioner.

Brief facts of the case are that the petitioner was convicted in criminal complaint No.264 dated 02.01.2014 titled as Madan Lal Vs. Rajesh Attri under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') and was sentenced to undergo R.I. for one year. The appeal filed by the petitioner was dismissed vide order dated 13.07.2017 passed by the Additional Sessions Judge, Karnal. No appeal has been filed challenging the aforesaid judgments passed by the Courts below and the appellant is undergoing the sentence i.e. 01 year R.I as awarded by the trial Court.

The present petition has been filed challenging the action of the

respondents, as the emergency parole applied by the petitioner, vide Annexure P-1, has not been granted, though he has to attend the marriage in his family for the purpose of performing certain ceremonies.

Reply by way of affidavit of Superintendent of Prison, District Prison, Karnal has been filed in the Court today and the same is taken on record and as per this affidavit, the petitioner was convicted under Section 138 of the N.I. Act and sentenced to undergo R.I. for one year and to pay compensation of Rs.13,20,000/- and in default of payment of compensation, to further undergo R.I. for two months. It is further stated that as per Rule 4 (1) & (2) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, the petitioner is not eligible for any kind of parole, as he has been sentenced to less than four years and has not completed one year imprisonment after his conviction on 13.07.2017.

Learned counsel for the petitioner submits that the petitioner is in judicial lockup since 13.07.2017 after dismissal of his appeal by the Additional Sessions Judge. Learned counsel for the petitioner has relied upon **Mahavir Vs. State of Haryana and others, 2012 (4) RCR (Crl.) 230**, where in similar situation when the parole was declined to a convict, as he has not completed one year of imprisonment as per Rule 4 (1) of the Rules, it was held that by invoking Rule 4 (1) of the Rules, a convict cannot be denied emergency parole. The operative part of the judgment is reproduced as under: -

“The present writ petition has been filed under Article 226 of the Constitution of India praying that the respondents be directed to grant emergency parole to the petitioner to enable

him to attend the marriage ceremony of his daughter namely Anju, under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as "the Act"). It is averred that in case FIR No.64 dated 15.05.1999, under Sections 363/366/376/506 IPC, registered at P.S. Hassanpur, the petitioner was convicted vide order dated 05.05.2001 by the Court of Addl. Sessions Judge, Faridabad and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/-. It is stated that wedding of daughter of the petitioner namely Anju is scheduled to be held on 25.04.2012. In support thereof, the petitioner has annexed a wedding card (Annexure P2) with the writ petition. Notice of this writ petition was issued and the State has filed reply thereto, by way of affidavit of Kulbir Singh, Superintendent, District Jail, Faridabad. It is stated therein that since the petitioner has not completed one year of his imprisonment, he cannot be granted parole. The State has relied upon Rule 4(1) of Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter referred to as "the Rules") and it reads as under:-

"Rule 4(1) - A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the Act."

Learned counsel for the petitioner has submitted that by

*invoking Rule 4(1) of the Rules, the petitioner cannot be denied parole. In support of this contention, reliance has been placed upon a judgment rendered in **Ranjit Singh v. State of Punjab and Others Recent Criminal Reports 388**. It was held therein that parole can be denied to the accused only on the grounds as specified in Section 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Thus, in view of the settled legal proposition that the Rules cannot override the provisions of the Act, the State was not justified in declining parole to the petitioner on the ground that he has not completed the requisite period of one year of his imprisonment. Even otherwise, the stand taken by the State is very harsh. The emergency parole is granted to the convict to attend various situations over which he has no control i.e. death or fixation of marriage of a relation. To say that the sister should postpone the marriage of her son or daughter, till the completion of one year of imprisonment by the convict so that she/he is able to attend the marriage, is demanding more than required. Rule 4 (1) of the Rules may be invoked in case of parole which is to be granted for attending agricultural pursuits or house repairs which are recurring periodical feature in the life of human being and over which the convict has control or can plan in advance. Hence, stand of the State that the petitioner has not completed one year of his imprisonment is untenable.*

Hence, the present petition is disposed of by directing the

State to reconsider the request of the petitioner for grant of parole and decide the same by 24.04.2012 by passing a reasoned order without invoking Rule 4(1) of the Rules.”

In reply, learned State counsel has submitted that since the petitioner has not completed one year of actual imprisonment, the jail authorities have rightly declined the prayer for emergency parole as per provisions of Rule 4 (1) of the Rules.

After hearing learned counsel for parties, I find merit in the present petition. Since the total sentence awarded by the trial Court is one year itself, the prayer for emergency parole cannot be rejected by citing Rule 4 (1) of the Rules and the petitioner cannot be denied emergency parole on account of the marriage in his family.

In view of the judgment in **Mahavir's** case (supra), it is held that the rules cannot override the provisions of Act, as the parole can be denied to an accused only on the ground as specified under the Act and since in the affidavit filed by the Superintendent of Prison, District Prison, Karnal, there is no reference that there is any bar under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and the rule providing minimum one year imprisonment is very harsh. The emergency parole is granted to a convict to attend various occasions on which he has no control, including death in the family of a convict or fixation of marriage of a relation.

In view of the above, this petition is disposed of with a direction to the respondents to grant emergency parole to the petitioner from 08.12.2017 till 10.12.2017. The petitioner will be released on 08.12.2017 at

10.00 AM subject to his furnishing all the requisite bail/surety bonds, as desired by the respondents, for the said purpose and he will surrender before the Superintendent of Prison, District Prison, Karnal on 11.12.2017 at 10.00 AM.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

05.12.2017
vishnu

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

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