

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRWP No.188 of 2017.
Date of Decision: 23.02.2017.**

BalwanAppellant.

VERSUS

State of Haryana and othersRespondents.

**CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Neeraj Kumar, Advocate for the appellant.

Mr. S.S. Pannu, Deputy Advocate General, Haryana.

S.S. SARON, J.

Learned counsel for the State has filed short reply by way of affidavit of Sh. Satyawar, Deputy Superintendent, District Jail, Jhajjar. The same is taken on record. He has also submitted copy of the statement of Krishan Kumar son of Sardar Singh Rathi, resident of Bahadurgarh, who according to the wedding card (Annexure-P1) is the father of the bride Ms. Gyanwati. The statement is taken on record.

Heard learned counsel for the parties.

The petitioner seeks emergency parole for six weeks in terms of Section 3 (1) (c) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act'- for short) for the purpose of his own marriage which is fixed for 28.02.2017. The petitioner, it is stated, was arrested in case F.I.R.

No.276 dated 26.09.2007 registered at Police Station Bahadurgarh, District

Jhajjar for the offence under Section 302 of the Indian Penal Code ('IPC' - for short). He was convicted by learned Additional Sessions Judge, Jhajjar on 22.04.2013 for the said offence and by a separate order passed on 29.04.2013, he was sentenced to undergo life imprisonment. The petitioner against his said conviction and sentence has filed criminal appeal i.e. Criminal Appeal No.D-440-DB of 2013, which is pending in this Court.

The petitioner seeks parole for six weeks for his own marriage. He has placed on record the marriage card (Annexure-P1) from his side and also marriage card (Annexure-P2) from the side of the bride. It is also stated that the facts have been verified by the Sarpanch, Gram Panchayat, Badli (Jhajjar) wherein it is mentioned that the programme (Lagan/Sagai) in respect of the petitioner is fixed for 27.02.2017 and the *Baraat* (marriage party) is to leave on 28.02.2017. According to the petitioner, there is no problem to any villager if he came to the village. A copy of certificate (Annexure-P3) issued by the Sarpanch, Gram Panchayat, Badli (Jhajjar) has been placed on record. Besides, it is stated in Para No.5 of the petition that the Municipal Council, Ward No.14, Bahadurgarh has also verified the factum of marriage.

It is submitted that a request was made to the respondents in accordance with law for the grant of parole, however, the same has been declined on the ground that case F.I.R. No.453 dated 21.05.2016 under Sections 42/45 of the Prisons Act, 1894 has been registered against the petitioner at Police Station Jhajjar. As a consequence of the said criminal case, the petitioner has been proceeded against under Prisons Act, 1894 for a jail offence, which is entered in the history ticket of the petitioner. It is

stated that registration of a criminal case is without any substance as the

petitioner has been acquitted by learned Judicial Magistrate Ist Class, Jhajjar on 15.12.2015 (Annexure-P5). It is further stated that the petitioner is in jail for the last 11 years and his co-convicts have been granted the concessions of parole. Besides, Criminal Writ Petition No.56 of 2017 filed by the petitioner is pending.

In terms of the reply that has been filed, the petitioner, it is stated, has been convicted thrice in three different FIRs and he has been sentenced to undergo life imprisonment along with seven years rigorous imprisonment in another case. The details of his convictions and sentences in criminal cases have been mentioned as under:-

(1) Convicted on 29.04.2013 by Shri Rajesh Malhotra, learned Additional Sessions Judge, Jhajjar in case F.I.R. No.296 dated 27.10.2007 under Sections 148, 149, 120-B, 302 IPC, P.S. Sadar, Bahadurgarh and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.60,000/-; in default of payment of fine to further undergo rigorous imprisonment for one year and six months (Fine Not Paid).

(2) Convicted on 29.04.2013 in case F.I.R. No.276 dated 26.09.2007 under Sections 148, 149, 120-B, 302, 307 IPC, P.S. Sadar, Bahadurgarh and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.70,000/-, in default of payment of fine to further undergo R.I. for two years (Fine Not Paid).

(3) Convicted on 13.03.2015 by Ms. Raj Gupta, A.S.J. (Exclusive Court), Jhajjar in case F.I.R. No.289/07 under

Sections 148, 149, 302 IPC, P.S. Sadar, Bahadurgarh and sentenced to undergo R.I. for life and to pay fine of Rs.10,500/-, in default of payment of fine to further undergo R.I. for one year and S.I. for one month (Fine Not Paid). The said convict was released on bail on 10.10.2016 by the order of Hon'ble Punjab and Haryana High Court, Chandigarh vide order dated 14.09.2016 passed in CRM No.25324 of 2016 in CRA-D-710-DB of 2015 as conveyed through the Ld. Court of Ms. Suruchi Atreja Singh, ACJM, Jhajjar vide release order No.1055 dated 10.10.2016.

(4) Convicted on 24.10.2009 by Shri Najar Singh, ASJ, FTC, Jhajjar in case F.I.R. No.388/05 under Sections 302, 323, 307, 148, 149, 506 IPC and A. Act, P.S. Sadar, Bahadurgarh and sentenced to undergo R.I. for seven years and to pay fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for one year. The convict was released on bail in this case on 16.12.2011 as per record of District Jail, Gurgaon.

In view of the above, it is stated that the petitioner is a 'Hardcore Prisoner'. He is stated to be the right hand of the gang-head Mainpal of Badli Gang and he along with Mainpal committed heinous crime of murder inside District Jail, Gurugram at Bhondsi in respect of which case F.I.R. No.283 dated 07.10.2014 has been registered at Police Station Bhondsi for the offences under Sections 148, 149, 323, 324, 302, 303 and 120-B IPC. He has been acquitted in four cases which are offences under

Sections 323, 324/34 IPC of Police Station Sadar, Bahadurgarh; under Sections 323 and 506 IPC of Police Station Sadar, Bahadurgarh; for the offence under Sections 332, 353, 186, 506/34 IPC of Police Station Sadar, Bahadurgarh and F.I.R. No. 453/15 for the offence under Sections 42/45 Prisons Act, 1894 Police Station Jhajjar.

It is also stated that the petitioner committed a major jail offence by keeping a mobile phone in his possession inside the jail for which he was produced before the Superintendent, District Jail, Jhajjar. He was awarded punishment of stoppage of interview for one month and was ordered to be kept in security ward for security reasons on 21.05.2015. The punishment was judicially appraised by the learned District and Sessions Judge, Jhajjar vide order No.7190 dated 05.06.2015 (Annexure-R1). The petitioner is stated to be a 'Hardcore Prisoner' in terms of clause 2 (aa) (i) (8) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 as he is involved in serial killing i.e. murder under Sections 302 IPC in three cases as have been mentioned. It is also stated that as per clause 2 (2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 (Annexure-RIII), a convicted 'Hardcore Prisoner', who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years of imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge. It is further submitted that the petitioner is a 'Hardcore Prisoner' and committed a jail offence which has been judicially appraised by the learned District and Sessions Judge, Jhajjar. Therefore, he is not entitled for

The factum of marriage of the petitioner was verified by the Station House Officer, Police Station Sadar, Bahadurgarh and he has submitted his report dated 22.02.20017 stating that the facts were got enquired from the villagers and residents. The marriage card was obtained. According to the marriage card, the marriage is scheduled to be held on 28.02.2017 and the bride Ms. Gyanwati daughter of Krishan Singh is resident of House No.484, Saini Pura Mohalla, Bahadurgarh, District Jhajjar. An enquiry was conducted by going to the house of Krishan son of Sardare in City Bahadurgarh and he stated that Gyanwati is not his daughter. She is the sister of his son Parveen's wife namely Jai Kumari. An inquiry was also made from Parveen son of Krishan and his statement was taken. He stated that Gyanwati is his sister-in-law and his wife wanted to solemnize her marriage at her house which is at Bahadurgarh and the marriage is scheduled to be held with Balwan (petitioner) on 28.02.2017. In the marriage card, father's name of Gyanwati has been given as Krishan which is wrong. Gyanwati is daughter of Bhagwandas and is a resident of Gokalpuri, New Delhi. She has been residing with her sister for the last two years whose marriage has been fixed with Balwan son of Mangli, resident of village Badli. Balwan (petitioner), it is stated by the Station House Officer, Police Station Sadar Bahadurgarh, is a heinous criminal undergoing life sentence and grant of parole to him is not recommended. Copy of his report (Annexure-RIV) has been filed.

We have given due and thoughtful consideration to the matter. It is to be noticed that the marriage of the petitioner is fixed for 28.02.2017. However, the petition has been filed on 15.02.2017. It is to be noticed that

Superintendent, District Jail, Jhajjar on 31.01.2017. The learned counsel who has filed the petition was also engaged on the said date according to the 'Vakalatnama', that has been filed. Despite that, the petition has been filed on 16.02.2017 and it was listed on 21.02.2017. This was probably done that an effective and proper enquiry could not be got conducted with regard to the marriage which is stated to be fixed for 27.02.2017.

Notice of motion was issued on 21.02.2017 for 23.02.2017 and Shri S.S. Pannu, Deputy Advocate General, Haryana, on the asking of the Court, accepted notice. Despite the short time, a detailed enquiry has been conducted and it has been brought on record that the petitioner has been convicted in four cases as mentioned above. Besides, he is also involved in certain other cases including committing murder in the District Jail Gurugram at Bhondsi along with the head of his gang namely Mainpal of Badli Gang. Besides, he has been termed as a "Serial Killer" in terms of clause 2 (2) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2015. He has also been involved for a major jail offence by keeping a mobile in his possession for which he was awarded punishment of stoppage of interview for one month and was ordered to be kept in security ward for security reasons on 21.05.2015. The punishment was judicially appraised by learned District and Sessions Judge, Jhajjar vide order No.7190 dated 05.06.2015 (Annexure-R1).

The wedding card, which depicts the name of the bride Ms. Gyanwati as the daughter of Krishan Singh, is also incorrect. She in fact is the daughter of Bhagwandas. Statement of Krishan Kumar was recorded by the police on 22.02.2017 and he stated that Bhagwandas had died. The son

Bhagwandas namely Jai Kumari. She is the sister of the bride Gyanwati. It is stated that Parveen was separate from him for the last two years and he did his own work. He had no connection with Parveen. He was also unaware as to where Parveen was performing the marriage of his wife's sister. It is stated that he did not know that his name had been got written by Parveen on the wedding card. It is stated that the wife's sister of Parveen comes and goes to him only. It is further stated that he has no concern with his son Parveen and his wife Jai Kumari.

It may also be noticed that the certificate of the Municipal Council is signed by one Jasbir Singh Saini and he is not shown to be either a Municipal Councilor, an office bearer or a member of the Municipal Council. Jasbir Singh Saini is a resident only of the area of Municipal Council, Ward No.14, Bahadurgarh. The seal put by him below his signatures does not depict him to be a Municipal Councilor or any other officer of the Municipal Council, Bahadurgarh. It is for the said reason that the petitioner in Para No.5 of the petition has mentioned that “Municipal Council, Ward No.14, Bahadurgarh has also verified that the marriage of Gyanwanti daughter of Krishan Singh son of Sardare, resident of House No.484, Sainipura, Bahadurgarh, District Jhajjar is fixed with Balwan son of Mangli, resident of Badli, Tehsil Bahadurgarh for 28.02.2017 as per the Hindu rites and rituals”. It is not stated that any Municipal Councilor or Member of the Municipal Council had verified this fact. Only “Municipal Council” has been mentioned. Besides, it is pertinent to note that Jasbir Singh Saini, who has given the certificate has verified that the marriage of Gyanwati daughter of Krishan Singh is to be solemnized, whereas she is daughter of Bhagwandas. Therefore, this certificate is not only by an

unauthorized person but is factually incorrect and it is sought to be given the colour of Municipal Council which is wrongly stated in Para No.5 of the petition.

Keeping in view the aforesaid facts and circumstances, we find no merit in the petition and the same is dismissed with costs of Rs.5,000/- which shall be deposited by the petitioner with the Haryana State Legal Services Authority.

(S.S. Saron)
Judge

(Sneh Prashar)
Judge

23.02.2016
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**