

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

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**CRWP No.461 of 2017
DATE OF DECISION:01.08.2017**

PARDEEP DHAKA

... Petitioner(s)

Versus

STATE OF HARYANA AND ORS.

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Mohan Lal Singla, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the order dated 22.03.2017 (Annexure P-3), whereby his application for release on parole has been dismissed.

2. The petitioner has been convicted under Sections 148, 149, 332, 333, 353, 323, 452, 506 IPC by the judgment of the Additional Sessions Judge dated 09.11.2002 and sentenced to undergo rigorous imprisonment for 8 years. In the criminal appeal preferred thereagainst by the petitioner bearing CRA-S-51-SB of 2003, this Court had reduced the sentence of the petitioner from 8 years to 4 years vide judgment dated 15.11.2010. The petitioner preferred SLP thereagainst and the Supreme Court in Criminal Appeal No.858 of 2016, reduced the sentence from 4 years to rigorous imprisonment for a period of 2 years.

3. The petitioner is stated to have undergone 1 year, 2 months and 28 days out of the total sentence of 2 years as on 03.07.2017. The wife of the

petitioner moved an application for his release on parole for admission of his children, stating therein that his two daughters are studying in school and college and she is unable to arrange their fees and therefore, the petitioner who is their father, should be released on parole for a period of 15 days for this purpose. The application has been rejected by the Superintendent, Jail by the order dated 22.03.2017 (Annexure P-3) on the ground that the petitioner is serving a sentence of 2 years and in terms of Rule 4(2) of the Haryana Good Conduct Prisoners Rules, 2007 (hereinafter referred to as Rules of 2007), he is not entitled to parole as the benefit of parole can be extended only to those convicts who are undergoing sentence of more than 4 years.

4. Learned counsel for the petitioner contends that the petitioner is entitled to be released on parole as the condition of sentence of 4 years has been imposed by the respondents through Rules of 2007 and there is no such provision in the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as Act of 1988) and therefore, rules cannot override the provisions of the Act. In support of his submission, he has placed reliance upon the judgments of Division Bench of this Court in the cases of **Deepak Vs. State of Haryana and another** reported as **2014 (4) R.C.R (Criminal) 531** and **Rakesh Vs. State of Haryana, CRWP No.1293 of 2014** decided on **05.09.2014**.

5. Learned State counsel, however, contends that the case of the petitioner for release on parole was considered and in view of Rule 4(2) of Rules of 2007, his sentence being less than 4 years, it was rightly rejected.

6. It would be necessary to set out Section 3 of the Act of 1988, which reads 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 far 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.”*

7. Section 3 sub section (1) of the Act of 1988 sets out various grounds on which the convicts can avail the benefit of parole. These grounds

include illness of the convict or his family member, marriage of relatives and for agricultural operations. Section 3(1)(d) of the Act of 1988 also provides for the release on parole if it is found to be desirable on any other sufficient cause. The convicts having been convicted and sentenced for imprisonment of less than 4 years being ineligible for parole is nowhere stipulated in the Act.

8. Rule 4(2) of the Rules of 2007 is set out as hereunder:-

“(2) A prisoner, who has been convicted and sentenced for imprisonment less than four years, shall not be eligible for parole.”

9. It is well settled that the rules cannot override the Act. In any event, a prisoner who is convicted and sentenced for a lesser period of 2 years cannot be at a disadvantage vis a vis a convict who is undergoing a higher sentence of 4 years to deny him the benefit of parole. The Division bench of this Court in the case of **Deepak Vs. State of Haryana and another (supra)** while interpreting the condition of at least 1 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 supersede the substantive provisions of the Act.

10. Similarly, the case of the petitioner cannot be rejected on the ground that he has been sentenced to less than 4 years of imprisonment. The petitioner has sought his release for the admission of his daughters and arranging money for their education. This ground by itself may not find mention in the Act itself but would certainly be covered under Section 3(1)(d) of the Act of 1988, as it would constitute any other sufficient cause.

The education of the children would certainly be a more important ground for

the release on parole as compared to attending the marriage of sister's son as stipulated in Section 3(1)(b). The 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. It also deserves to be noticed that even in the Rules of 2007, Rule 8(i) stipulates that admission of the dependents of convicts in school, college and professional institutions would be constituted as a sufficient cause under Section 3(1)(d) of the Act of 1988.

11. For these reasons, the impugned order is set aside and the respondents shall consider the case of the petitioner for parole without taking into account Rule 4(2) of Rules of 2007 laying down the condition of sentence for 4 years of imprisonment. The petitioner shall move a fresh application for his release on parole which shall be considered by the Superintendent of Jail without taking into account Rule 4(2) of Rules of 2007 and decided within a period of 7 days of its receipt.

August 01, 2017

SwarnjitS

(ANUPINDER SINGH GREWAL)

JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No