

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

CrWP No.70 of 2017

Date of Decision:- 25.01.2017

Parveen @ Billa

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- None.

S.S.SARON, J.

Reply by way of affidavit of Sh. Sher Singh, Superintendent, District Prisons, Karnal has been submitted in Court today. The same is taken on record.

Criminal writ petition has been filed by the petitioner seeking four weeks parole to attend the marriage of his sister's son ('bhanja') which is to be solemnized on 31.01.2017. In the said marriage ceremony, the petitioner being the maternal uncle of the bride is to perform the 'bhatt' ceremony.

The petitioner has been convicted by the learned Additional Sessions Judge, Panipat on 18.03.2016 in case FIR No.194 dated 19.05.2012 for the offences punishable under Sections 148, 149, 307, 302 and 120-B Indian Penal Code; besides, Section 25 of the Arms Act, 1959.

He has been sentenced to undergo life imprisonment; besides, pay a fine of

Rs.20,000/- and in default thereof undergo simple imprisonment for two years. Against the said conviction and sentence, the petitioner has filed Criminal Appeal No.D-489-DB of 2016, which is pending in this Court. At present, the petitioner is undergoing his life imprisonment in the said case.

The marriage of the petitioner's sister's son is to be solemnized at village Alupur, District Panipat on 31.01.2017. The wedding card (Annexure P-2) and Panchayat report dated 11.1.2017 (Annexure P-3) of the Gram Panchayat Barana, Panipat regarding the factum of marriage have been placed on record. The petitioner submitted an application (Annexure P-1) to the Superintendent District Jail, Karnal on 13.01.2017 for grant of four weeks parole to him, which it is stated has been declined.

In terms of the reply of Sh. Sher Singh, Superintendent, District Prisons, Karnal it is submitted that the factum regarding marriage of sister's son of the petitioner was got verified from the SHO, Police Station Sadar Panipat vide office PTM No.1677-79 dated 23.1.2017. Sh. Jassram, 559 ESI, Police Station Sadar Panipat after conducting an enquiry reported through g-mail dated 23.1.2017 that it was true that the marriage of sister's son of the petitioner is fixed for 31.1.2017. However, it is submitted that the petitioner is not entitled for parole as he has not completed one year of imprisonment after his conviction on 18.03.2016, besides, he has not earned his first annual good conduct remission under the Haryana Good Conduct Prisoners (Temporary Release), Act, 1988 ('the Act'-for short). The said completion of one year imprisonment after conviction and earning first annual good conduct remission under the Act is required in terms of the provisions of Rule 4 (1) of the Haryana Good Conduct Prisoners (Temporary Release), Rules 2007 ('the Rules'-for short).

It is also submitted that the petitioner has availed three weeks furlough from 23.08.2016. The application of the petitioner for grant of parole has been filed vide speaking order dated 19.01.2017 (Annexure R-1). In view of the above, it is submitted that the petitioner is not entitled for parole and the petition merits dismissal.

We have given our thoughtful consideration to the matter.

As has already been noticed the petitioner is undergoing life imprisonment for which he has been convicted and sentenced by the learned Additional Sessions Judge, Panipat on 18.03.2016. According to the reply, the petitioner has undergone imprisonment during the under trial period for a period of 2 years 9 months and 13 days from 04.06.2013 to 17.03.2016. Thereafter, he has undergone imprisonment after conviction for 10 months and 6 days from 18.03.2016 to 23.01.2017. He has availed furlough for a period of three weeks from 23.08.2016 onwards. However, the period of furlough in view of Section 4 (3) of the Act, is to count towards the total period of the sentence undergone by a prisoner. The reasons for declining parole to the petitioner are that he is not entitled to apply for parole as he has not completed one year of imprisonment after conviction and has not earned his first annual good conduct remission of the Act; besides, he has availed three weeks furlough from 23.08.2016 onwards.

As regards the entitlement for parole, it is to be noticed that the petitioner claims temporary release on parole for the marriage of his sister's son which is provided for in terms of Section 3 (1) (b) of the Act. Section 3 of the Act reads as under:-

“Section 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 and 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 the prisoner; 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 grounds specified in clause (c) of sub-section (1), six weeks.”

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks.”

Therefore, a prisoner can seek parole in terms of aforesaid Section 3 (1) (b) of the Act and is entitled for temporary release on parole for the marriage of his sister's son, however, the period of his release is not to exceed four weeks in terms of Section 3 (2) (b) of the Act. Rule 4 (1) of the Rules, which according to the respondents dis-entitles the petitioner for temporary release on parole reads as under:

4. Eligibility. [Section 10 (2) (d)] - (1) 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.

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

A Division Bench of this Court in the case of **Gurpreet Singh v. State of Punjab**, 2012 (3) RCR (Criminal) 504 considered the question where the prisoner immediately after his conviction and sentence to life imprisonment for the offence under Section 302 IPC applied for emergency release of four weeks' parole on account of the illness of his mother who was advised an operation. It was noticed that the prisoner in the said case was entitled to temporary release on parole in case of an emergency under Section 3 (1) (a) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 which was applicable in the said case. However, he was denied the benefit of parole in terms of Rule 13 (2) of the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 which provided that no such application was to be processed by the Superintendent of Jail unless the prisoner had maintained good conduct after his conviction at least for four months in jail. The said Rule was held to be procedural and directory in nature and not mandatory. It was held that the provision of Section 3 (1) (a) of the Act, as applicable in the said case, was a substantive provision which would prevail over the procedural provisions of the Rules as applicable in the said case.

Therefore, Rule 4 (1) of the Rules which has been invoked to deny temporary release on parole to the petitioner in present case, is a procedural provision and is directory in nature. It would not prevail over the substantive provisions of the Act. The petitioner being entitled for temporary release on parole in terms of Section 3 (1) (b) of the Act cannot be held to be dis-entitled for the same by resort to a procedural provision which is directory in nature.

The other ground for declining temporary release on parole to

the petitioner is that he had availed furlough for a period of three weeks from 23.08.2016 onwards.

This Court in Satyavart v. State of Haryana 1997 (3) RCR (Criminal) 672 in a case under the Act considered the case of a prisoner who had been released on parole for two weeks and had sought second parole to attend the marriage of his sister's son. It was held that the Act did not contain any restriction for grant of second parole except the one regarding total period prescribed under Section 3 (2) (b) of the Act. The restriction it was held could not be imposed by executive instructions for seeking second parole. The government was directed to release the petitioner on ten days parole in the said case.

In Kirpal Singh v. State of Haryana, 1997 (3) RCR (Criminal) 735, also a case under Section 3 (1) (b) of the Act, the petitioner in the said case had already been granted two weeks parole and shortly after that he sought second parole to attend the marriage of his sister's son. It was held that the second parole was not to be refused and that there was no restriction in the number of times to grant parole. The only restriction was that the total period of parole should not exceed four weeks.

Therefore, following the judgments of this Court in Satyavart's case and Kirpal Singh's case (supra), the mere fact that the petitioner has availed three weeks furlough from 23.08.2016 onwards would not dis-entitle him or come in his way to decline him parole to attend the marriage of his sister's son which is provided for in terms of Section 3 (1) (b) of the Act as noticed above. The only restriction is that the period of temporary release on parole in terms of Section 3 (2) (b) of Act is not to exceed four weeks.

In the above facts and circumstances, the criminal writ petition is allowed and the petitioner on his furnishing personal bond and surety to the satisfaction of the competent authority under the Act shall be temporarily released on parole for a period of 10 days to be counted from the date of his release. The Superintendent, District Prison, Karnal shall specify the date on which the petitioner is to surrender in the jail after the expiry of a period of 10 days of his parole.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

January 25, 2017
mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No