

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

CWP No.10327 of 2018

Date of decision: 11.06.2018

Sumit

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for issuance of direction to the respondents to release the petitioner on emergency parole for a period of 04 weeks to enable him to get admission of his 02 children in a school.

The petitioner has been convicted and sentenced for life imprisonment in FIR No.446 dated 21.11.2013 registered under Sections 148, 149, 307, 302, 427, 452, 120-B, 216 IPC and 27/54/59 of the Arms Act. The petitioner filed an appeal i.e. CRA-D No.903-DB of 2017, which has been admitted by this Court and the same is still pending.

The wife of the petitioner applied for emergency parole for the petitioner vide representation dated 13.04.2018 (Annexure P1) along with a certificate issued by the Gram Panchayat, Behrampur, Sohana, District Gurgaon recommending that the petitioner be granted

parole for 04 weeks (28 days) and there is no apprehension of any breach of peace in the village, if the petitioner is granted parole.

Counsel for the petitioner has submitted that the daughter of the petitioner namely Nisha is aged about 06 years and son namely Kunal is aged about 07 years and the petitioner has to arrange funds, books, stationary items, school uniforms, etc. for their new admission in the school for the next classes. It is further submitted that since the Gram Panchayat of village Behrampur, Sohana, District Gurgaon has also certified that there is no possibility of any breach of peace in the village if the petitioner is granted 04 weeks parole, the action of the respondents in not releasing the petitioner on parole on the ground that he has not completed 01 year of sentence as per Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, the action of the respondents is not sustainable in view of the judgment passed by the Division Bench of this Court in ***“Surajmal vs State of Haryana and others”***, 2016(4) RCR (Criminal) 488, wherein this Court has held that the provisions of 2007 Rules cannot have an over-riding effect over the provisions of Section 3(1) (a) of the Haryana Good Conduct Prisoners Act, 1988. Counsel for the petitioner has also relied upon the judgment ***“Naresh vs State of Haryana and others”***, 2016(2) RCR (Criminal) 312, wherein also similar view has been taken by this Court that it is provided under Section 3 of the 1988 Act that a prisoner is entitled for parole for the reasons given under the Act and, therefore, the rider put in Rule 4(1) of the 2007 Rules that a convict cannot be released on parole prior to completion of 01 year from the date of starting his sentence cannot have an over-riding effect

over the provisions of the Act.

Reply on behalf of the Superintendent, District Jail, Gurugram has been filed and as per the reply, the sentence of the petitioner started on 16.08.2017 and he has not completed 01 year of conviction and, therefore, he is not entitled for parole prior to 16.08.2018. It is also stated that a case was also registered against the petitioner under Section 42(a) of the Prisons Act for violating the standing orders of the Director General of Prisons, Haryana.

After hearing the counsel for the parties, I find that the case of the petitioner is covered by the ratio of law laid down in ***Surajmal's case (supra)*** and ***Naresh's case (supra)***. The operative part of the judgment in ***Naresh's case (supra)*** is reproduced as under:-

“9. Having heard counsel for the parties, this Court is of the considered view that the impugned order dated 24.03.2015 passed by the Superintendent of Prison, District Prison, Jhajjar cannot sustain.

10. Section 3 of the Haryana Good Conduct Prisoners (Temporary release) Act, 1988 reads in the following terms:

"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 one during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all or any other ground specified there under."

11. *In terms of Section 3, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. Temporary release under Section 3 of the Act can also be considered on the ground of marriage of the prisoner himself or close relative under Section 3(b). Temporary release may also be considered 'for any other sufficient cause' under Section 3(d).*

12. *The restriction of one year imprisonment after conviction to be eligible for temporary release as has been imposed by way of the rules cannot supersede the substantive provisions of the Act i.e. the Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988.*

13. *Precisely, this very issue came up for consideration before a Division Bench of this Court*

in Deepak v. State of Haryana & another, 2014 (4) RCR (Criminal) 531 and it was held as follows:

"5. We have given our thoughtful consideration to the matter. It may be noticed that in terms of Section 3(1)(a) of the Act, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was published in the Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act."

14. Similar view has also been taken by a Division Bench of this Court in a recent judgment dated 05.09.2014 rendered in CRWP No. 1293 of 2014 titled as Rakesh v. State of Haryana & others.

15. Following the dictum laid down by this Court in the judgments noticed herein above, the impugned order dated 24.03.2015 is set aside.

16. Directions are issued to the Competent Authority i.e. the Superintendent of Prison, District Prison, Jhajjar to consider the prayer raised on behalf of the petitioner seeking parole as per application dated 13.03.2015 at Annexure P-1 (along with supporting documents) strictly on merits and without adverting to the bar contained in Rule 4 of the Haryana Good Conduct Prisoner's (Temporary Release) Rules, 2007.

Afresh order be passed within a period of one week from today.

Disposed of."

In view of the above, this petition is disposed of and a direction is issued to the competent authority i.e. the Superintendent of Jail, Gurugram to consider the prayer of the petitioner seeking parole

on the basis of the application dated 13.04.2018 (Annexure P1) along with the supporting documents, on merits and without adverting to the bar contained in Rule 4 of the Haryana Good Conduct (Temporary Release) Rules, 2007. The respondent No.2 is directed to pass a fresh order within a period of 01 week from the date of receiving the certified copy of this order.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

11.06.2018
yakub

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