

CWP Nos.1237 & 1238 of 2018

[1]

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

(1) **CWP No.1237 of 2018**
Himanshu ...Petitioner

Versus

State of Haryana and others ...Respondents

(2) **CWP No.1238 of 2018**
Himanshu ...Petitioner

Versus

State of Haryana and others ...Respondents

Date of decision:22.01.2018

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Govind Chauhan, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing CWP Nos.1237 and 1238 of 2018 filed by petitioner-Himanshu, seeking parole to attend the marriage of his real sister in terms of the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the "Act").

In CWP No.1237 of 2018, the petitioner was tried in FIR No.77 dated 26.01.2013, registered under Sections 364-A and 387 IPC at Police Station City Panipat, in which he was convicted on 24.12.2015 to undergo life imprisonment and to pay a fine of ₹20,000/- for the offence committed under Section 364-A IPC and for a period of five years and to pay a fine of ₹10,000/-

under Section 387 IPC. The petitioner has allegedly filed CRA-D-283-DB-2016 against his conviction and sentence. It is alleged that the petitioner has already undergone the custody of 4 years and 7 months. The petitioner applied for parole to attend the marriage of his sister Akanksha, which was fixed for 22.01.2018. Initially, the petitioner had filed CRWP-1517-2017 for emergency parole, in which notice was issued for 20.12.2017 and the report regarding decision on his application was sought. The Deputy Superintendent Jail, District Jail, Yamuna Nagar, filed a status report vide order dated 10.01.2018 and a status report was also filed on 04.01.2018 by the Deputy Superintendent of Police, City, Panipat, in which it was alleged that the marriage of the sister of the convict was going to be solemnized on 22.01.2018 but the said Criminal Writ Petition was dismissed on 11.01.2018 on the ground of maintainability but liberty was granted to the petitioner to file a fresh petition in accordance with law. The petitioner then filed CRM-M-1845-2018, which was listed before the Division Bench of this Court, in which the following order was passed by the Division Bench on 19.01.2018:-

“After realizing that the Criminal Misc. Petition under Section 482 CrPC may not be maintainable for the relief claimed for, learned counsel for the petitioner submitted that the same may be treated as Civil Writ Petition, as even the Criminal Writ Petition is also not maintainable in view of the writ jurisdiction rules framed by this Court.

Without opining on the maintainability as such of Civil Writ Petition or any other kind of petition for seeking relief prayed for in the present petition, the Registry is directed to register the present petition as a Civil Writ Petition and list the same as per roster today itself.”

Accordingly, CRM-M-1845-2018 was converted into the writ petition and was assigned CWP No.1237 of 2018, in which notice of motion

was issued for today.

In CWP No.1238 of 2018, the petitioner has made the same prayer for emergency parole in FIR No.376 dated 09.05.2014, registered under Section 364-A IPC at Police Station Civil Lines, Karnal, in which he was sentenced to undergo life imprisonment with fine of ₹20,000/-. The petitioner has challenged the said order of conviction and sentence in CRA-D-652-DB-2016. It is alleged that the petitioner has already undergone the sentence of more than 4 years and he applied for emergency parole to attend the marriage of his real sister. Initially, the petitioner had filed CRWP-1516-2017, in which notice was issued for 21.12.2017. However, the said Criminal Writ Petition was dismissed by this Court on 11.01.2018 being not maintainable but liberty was granted to the petitioner to file a fresh petition in accordance with law. Accordingly, the petitioner filed CRM-M-1841-2018, which has also been converted into the writ petition and assigned as CWP No.1238 of 2018, in which notice has also been issued for today.

Although counsel for the petitioner has applied for emergency parole by invoking Section 3(1)(b) of the Act but having committed the offence under Sections 364-A and 387 IPC, he falls within the definition of hardcore prisoner. The relevant extract of Rule 2(aa)(i) qua the definition of “hardcore prisoner” is reproduced as under:-

“2. **Definitions.-** In this Act, unless the context otherwise, requires,-

- (a) “District Magistrate” means the District Magistrate of the district within whose jurisdiction the prisoner after his temporary release under this Act, is likely to reside during the period of his release;
- (aa) “**hardcore prisoner**” means a person,-
 - (i) who has been convicted of

- (1) robbery under section 392 or 394 IPC;
- (2) dacoity under section 395, 396 or 397 IPC;
- (3) kidnapping for ransom under Section 364-A IPC;
- (4) murder or attempt to murder for ransom or extortion under section 387 read with 302 or section 387 read with 307 IPC;

xxx xxx xxx”

Since the petitioner is a hardcore criminal who cannot be released on parole under Section 3(1)(b) of the Act to attend the marriage of his sister under, therefore, he is not entitled for the parole, as prayed as only Section 5A of the Act deals with the temporary release of hardcore prisoners, which has not been invoked by the petitioner in both the cases. For the ready reference, Section 3(1)(b) and Section 5A of the Act are reproduced 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 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”

“5. Special provisions for temporary release of hardcore prisoners. (1) Notwithstanding anything contained in sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:

Provided that a hardcore prisoners may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-laws, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned Superintendent of Jail:

Provided further that a hardcore prisoner may be released on temporary basis to attend the marriage of his daughter for ninety-six hours and for the marriage of his son for seventy-two hours under an armed police escort, to be decided by the concerned Superintendent of Jail. He shall intimate within twenty-four hours, the concerned District Magistrate and Superintendent of Police in this regard with full particulars of the hardcore prisoner being so released.

(2) Notwithstanding anything contained in sub-section (1), 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 imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge:

Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment:

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

In view of the positive explained above, I do not find any merit in both the petitions and hence, the same are hereby dismissed, though without any order as to costs.

January 22, 2018
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(Rakesh Kumar Jain)
Judge

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