

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

Civil Writ Petition No. 15545 of 2018 (O&M)
Date of decision : 06.07.2018

VishnuPetitioner

versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Sarla Chaudhary, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

RITU BAHRI, J. (Oral)

The petitioner is seeking direction to the respondents to release him on emergency parole as his wife is in advance stage of delivery, in view of The Haryana Good Conduct Prisoner's Temporary Release Act, 1988 and Rules 8 (ii) of Haryana Government Jail Department.

On notice, a reply dated 06.07.2018 has been filed by the State in the Court today and the same is taken on record. As per reply, the petitioner is undergoing rigorous imprisonment for 10 years in case F.I.R No. 53 dated 17.02.2016 u/s 304-B/498-A/406/506/34 IPC, P.S. Mujessar, District Faridabad. The petitioner was convicted on 13.12.2017 and has not completed one year custody after conviction and thus he is not entitled for parole/Furlough, as he has to complete one year of sentence of his conviction as per Section 4 (1) of The Haryana Good Conduct Prisoner's Temporary Release Rules, 2007.

However, as per report of SHO, P.S. Mujessar (Annexure R-2), the petitioner's wife is pregnant of 36 weeks' and the date of her delivery is given as 23.07.2018.

Learned counsel for the petitioner at the very outset has

referred to a judgment passed by this Court in a case of ***Dharambir Singh vs. State of Haryana and others, 2007 (2) R.C.R (Criminal) 125*** wherein this Court dealt with a similar case and granted the petitioner two weeks' parole on his furnishing requisite bail bonds to the satisfaction of the Duty Magistrate. The wife of the petitioner in this case was also pregnant and the petitioner was seeking parole on account of delivery of his wife but the petitioner has not completed one year of sentence. This Court granted him parole by observing as under:-

“4. Under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for brevity, the Act), temporary release can be ordered for any other sufficient cause. In the instant case, there is an emergency as the petitioner's wife is pregnant and the expected date of delivery is 22.12.2006. It is otherwise evident from the medical certificate, Annexure P-2. Even the Gram Panchayat, Salemgarh, has also strongly recommended petitioner's release on this account. The Act ibid is a piece of beneficial legislation and has been enacted for temporary or emergent release on certain conditions. The plea of the petitioner that there is no other male member in the family to look after his wife has been supported by a certificate issued by the Sarpanch of Gram Panchayat, Salemgarh.”

Reference at this stage can further be made to a Division Bench judgment of this Court in a case of Aman alias Kala vs. State of Haryana and others, 2017 (3) RCR (Crl) 279 wherein also the petitioner was undergoing imprisonment in a murder case and has not completed one year rigorous imprisonment and his parole was rejected as he is not entitled but this Court granted parole to the petitioner to attend the marriage of his sister by observing as under:-

“5. The provisions of the Act are substantive provisions and

there is no restriction for completing one year imprisonment under the Act which is sought to be invoked by way of Rules. It is well known that the provisions of the Rules cannot override the substantive provisions of the Act. Therefore, the petitioner would be entitled for temporary release on parole in terms of Section 3 (1) (b) of the Act, as noticed above.

6. Section 3 (2) of the Act provides the period for which a prisoner may be released which is to be determined by the State Government so as not to exceed four weeks in case a petitioner is to be released on the grounds specified in Clause (b) of Sub-section (1) of Section 3 of the Act. The petitioner, therefore, is entitled for temporary release for a period of one week to enable him to attend his sister's marriage. The marriage card (Annexure P2) regarding marriage of the sister of the petitioner and a certificate (Annexure P3) from Gram Panchayat, village Risalu, District Panipat, certifying that the petitioner is resident of village Risalu and requesting that the petitioner may be granted parole have been placed on record. The same are credible and convincing.

Applying the ratio of the above said judgment to the facts of the present case, the present petition is allowed and the petitioner on his furnishing personal bond and surety bonds to the satisfaction of the District Magistrate, Faridabad/Competent Authority shall be released on parole for a period of three weeks to be counted from the date of his release. The petitioner shall surrender before the jail authorities after expiry of the period of parole. He shall not commit any offence during the period of parole and shall avail the parole only for the afore-stated purpose.

06.07.2018

G Arora

(RITU BAHRI)
JUDGE***Whether speaking/reasoned***
Whether reportable***Yes***
No