

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15654 of 2018
Date of Decision:13.07.2018

Amandeep

. Petitioner

Vs.

State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Amardeep Singh Mann, Advocate,
for the petitioner.

Mr.Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of mandamus seeking direction to the respondents to consider his request for releasing him on emergency parole for the purpose of admission of his children in the school.

In brief, the petitioner is presently lodged in District Jail, Jhajjar, having been convicted in a case registered vide FIR No.188 dated 13.6.2015 under Sections 279, 336 and 482 of the Indian Penal Code, 1860 [for short 'the IPC'] and Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act']. The petitioner has been sentenced maximum for 10 years for the offence committed under the NDPS Act. It is alleged that the petitioner has two children, namely, Alan Gill and Yuvraj Gill, who are studying in St. Michael's Convent School in District Patiala in class nursery and UKG, respectively. The petitioner was informed by the school that since the fee of his wards has not been deposited, therefore, they would not be allowed to continue in the school. The

petitioner, therefore, made an application to the Superintendent Jail, Jhajjar for releasing him on emergency parole for the purpose of arranging admission/school fee of his wards as according to him there is no other male member in his family.

After notice, the respondents have filed their reply with which they have appended an order passed by the Superintendent of Prison, District Prison, Jhajjar dated 1.6.2018 by which the application filed by the petitioner for grant of emergency parole has been declined on the ground that since the petitioner has not completed one year imprisonment after conviction nor earned his first annual good conduct remission, therefore, he is not entitled for parole.

Learned counsel for the petitioner has submitted that the petitioner has applied for parole in terms of Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the Act'] as per which the State Government, 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 any prisoner, if the State Government is satisfied that it is desirable to do so for any other sufficient cause. It is also submitted that as per Section 3(2)(b) of the Act, the prisoner is to be released on the ground specified in Clause 3(1)(d) of the Act for a period not exceeding four weeks. He has further submitted that the Act confers power under Section 10 on the State Government to make Rules in which Section 10(2)(d) of the Act deals with the 'power to make rules' laying down the conditions on which and the manner in which prisoners may be released temporarily under the Act. He has referred to Rule 8 of the Haryana Good

to contend that as per Rule 8(i) of the Rules, admission in school is also a sufficient cause on the basis of which the petitioner can invoke the provision of Section 3(1)(d) of the Act. It is further submitted that the petitioner has been declined temporary parole on the ground that he has not completed one year of imprisonment after conviction and has not earned his first annual good conduct remission which is so provided in Rule 4(1) of the Rules. In this regard, he has referred to two decisions of the Division Bench of this Court rendered in the cases of “*Gurpreet Singh Vs. State of Punjab and another*” 2012(3) RCR (Criminal) 504 and “*Deepak Vs. State of Haryana and another*” 2014(4) RCR (Criminal) 531. In the case of *Gurpreet Singh (Supra)*, the Division Bench of this Court has held that the acquisition of remission on account of good conduct for at least four months after conviction is a procedural provision and is thus directory and not mandatory and in the case of *Deepak (Supra)* the Division Bench of this Court has held that restriction of one year of imprisonment after conviction to become eligible for temporary release has been imposed by way of Rules whereas there is no such restriction in the Act, therefore, the Rules cannot supersede the Act.

On the other hand, learned counsel, appearing on behalf of the State, has submitted that Rule 8 of the Rules has been enacted on the basis of the power conferred under Section 10(2)(d) of the Act in which it is provided that the State Government would lay down the conditions on which and the manner in which the prisoners may be released temporarily. On dissection of the said provision, it is said that the words used in Section 10(2)(d) of the Act are found as (i) conditions, (ii) manner and (iii) release. He has submitted that the admission in school/college/professional institutions of the dependents of the convict provided in Rule 8(1) of the

Rules is the condition for the purpose of seeking release. It is further submitted that the manner is provided by laying down the time frame within which the application for seeking parole can be applied and for how long it can be granted.

I have heard both the learned counsel for the parties and perused the available record with their able assistance.

It is needless to mention that the Act was brought to provide for the temporary release of prisoners for good conduct on certain conditions. Section 3 of the Act deals with the ‘temporary release of prisoners on certain grounds’ and the ‘conditions’ have been laid down for the purpose of seeking parole i.e. if a member of the prisoner family had died or is seriously ill or the prisoner himself is seriously ill, if there is a marriage of the prisoner or his son, daughter, grandson, grand-daughter or his siblings or his sister’s son or daughter, the temporary release is required by the prisoner for the purpose of agriculture and for any other sufficient cause. It is admitted that at the time when the Act was enacted in 1988, this provision was left upon for the competent authority to decide as to what shall be the sufficient cause for the purpose of entertaining the application of the prisoners in terms of Section 3(1)(d) of the Act but while laying down the Rules in 2007, Rule 8 of the Rules was provided to define ‘sufficient cause’ as well in which admission in school, delivery of wife, house repairs/new construction and marriage of prisoner’s brother’s son or daughter in case his brother is not alive are there. Once, it has been laid down in the Rules that admission in the school is a sufficient cause for the purpose of seeking temporary release, it would fall within the definition of Section 3(1)(d) of the Act and for that matter the authorities while applying Rule 3 of the Rules which laid down

provided in Rule 4 of the Rules in which it is provided that for the purpose of becoming entitled for parole one complete year of imprisonment after conviction should be there altogether with first annual good conduct remission . However, this Court in the case of ***Gurpreet Singh (Supra)*** , while dealing with the Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 and Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 has held that maintaining of good conduct for at least four months in jail after the conviction is directory and not mandatory, therefore, the said judgment squarely applies to the case of the petitioner to hold that in case of emergency parole where the person is seeking his release for the purpose of admission of his children especially when there is no male member in his family to look after them, the condition of completion of one year of imprisonment after conviction and earning of first annual good conduct remission under the Act is directory and not mandatory. In so far as, the completion of one year of his imprisonment is concerned, in the case of ***Deepak (Supra)***, this Court has again held that this condition is only in the Rules and not in the Act, therefore, it would not apply if there is an emergency on the basis of which the convict is asking for parole. Although learned counsel for the respondents has submitted that in the case of ***Deepak (Supra)***, wife of the prisoner was seriously ill but has also submitted that the issue as to whether there is an emergency or not is also a discretion because it has to be taken into consideration on the given facts and circumstances.

Be that as it may, in the present case, this Court has found that the petitioner has been convicted in one case. There is no allegation against him of any jail offence and there is a strong apprehension in his mind that his children would be deprived of education for want of fee which can be

Thus taking into consideration the facts and circumstances, I am of the considered opinion that in this particular case, the petitioner has an emergency for getting released on parole to arrange the fee for admission of his children, who are in nursery and UKG class. During the course of hearing, learned counsel for the petitioner has informed the Court that although in notice (Annexure P-1), the school had directed the petitioner to deposit the fee till 30.5.2018 but on the request of his wife, the said period has been extended, therefore, the present petition is hereby allowed and a direction is issued to the respondents to release the petitioner forthwith for two weeks on his furnishing personal bail bonds and surety to the satisfaction of the District Magistrate, Jhajjar. It is made clear that the petitioner shall surrender to the Jail authorities on the date when the period of his parole would come to an end.

13.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*