

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18195 of 2018(O&M)

Date of Decision:30.7.2018

Rajender Kumar
(Presently confined in District Jail, Karnal)

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sunil Sihag, Advocate for the petitioner

Ms.Shruti Jain Goyal, DAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. Written statement filed by the State is taken on record.
2. The petitioner's wife applied under Section 3 of the Haryana Good Conduct Prisoners Act, 1988 for release on parole on the ground of managing plantation in the family's agricultural land which request has been rejected vide order dated 21.7.2018 passed by the Superintendent of Prison, District Prison, Karnal.
3. The only argument raised by the State for denying parole to the petitioner is that he has not completed one year of sentence after conviction. In the written statement filed by the Superintendent of Prison, District Prison, Karnal on behalf of the respondents, the period of actual sentence undergone is shown to be 4 months and 29 days (both as under trial and after conviction). Reliance is placed by the respondents on a judgment of this Court in CrI.W.P.No.483 of 2012 decided on 16.3.2012 in which this Court held that if the statutory rules impose a legal bar on consideration of the case of the petitioners for temporary release under the aforesaid Act, the

same ought not to be overcome by a judicial order. The State has also relied on a judgment in Crl.W.P.No.2104 of 2012 decided on 14.12.2012 in which this Court observed as follows:-

“The test to determine whether a particular amendment would operate prospective or retrospective depends upon the question whether it affects vested right of a person. No prisoner has a vested right to get the benefit of temporary release on parole. It is a concession, which is given to a prisoner on fulfilling certain conditions. If on the date of making an application for grant of temporary release, a prisoner fulfills all the conditions applicable in his case; he can be considered for such concession for a limited period.”

4. On the other hand, learned counsel for the petitioner relies on a Division Bench judgment of this Court in Deepak vs. State of Haryana and another, 2014 (4) RCR (Criminal) 531 in which the legal position has been explained in the context of Section 3(1)(d) of the Haryana Good Conduct (Temporary Release) Act, 1988 and Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. In the case of *Deepak, supra*, the Division Bench of this Court has held that there being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act. The aforesaid judgment of the Division Bench has been reiterated by this Court in division bench judgment in case Manoj Kumar vs. State of Haryana and others, (Crl.Writ Petition 2654 of 2016 decided on 15th March, 2016). In *Manoj Kumar's* case, *supra*, the petitioner was convicted and sentenced to undergo life imprisonment vide judgment and order of conviction and

sentence dated 14/16.10.2016 under Sections 302/120-B/34/201/176/202 IPC and Section 25 of the Arms Act. The petitioner therein sought parole on the ground that his wife is in the family way and expected date of delivery was medically certified, and therefore, the Division Bench held that there was no reason for the authority to decline the prayer for release on parole. It has been observed by the Division Bench as follows:-

“Having heard learned counsel for the parties, we find that in terms of Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, a prisoner is entitled for parole in case it is desirable to do so for any sufficient cause. However, Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007, a prisoner is required to complete one year sentence after conviction and also earn his first annual conduct remission before becoming eligible for temporary release. The restriction by way of Rule 4 cannot supersede substantive provisions of the Haryana Good Conduct (Temporary Release) Act, 1988 wherein no such restriction had been imposed. Reliance in this regard can be placed upon the judgment of this Court in Deepak vs. State of Haryana and others, 2014 (4) RCR (Criminal) 531.”

5. Learned counsel for the petitioner further relies on Jagdev Singh and another vs. State of Punjab and others, (Crl.Writ Petition No.483 of 2012 decided on March 16, 2012). In the aforesaid case, the convict

sought release on parole to attend the marriage of the son of the first petitioner and brother of the second petitioner. The Division Bench of this Court considered Rule 3(2) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 which provision requires good conduct on the part of the convict for at least four months following his conviction before his application for temporary release can be processed. In these circumstances, the Division Bench observed that if the statutory rules impose a legal bar on consideration of the case of the prisoners for temporary release under the aforesaid Act, the same ought not to be overcome by a judicial order. However, it is always open to the court to consider the entitlement of the prisoners to bail for a limited period, keeping in mind the peculiar facts and circumstances of the case. This Court specifically considered the cases of both the petitioners. The request for release on parole was converted into release on bail for a limited period of 10 days to overcome the hurdle placed in the Act. But in the present case, in Haryana, the Act places no such restriction and it is only the Rule which seeks to restrict, which has been explained by the two subsequent Division Benches of this Court in *Deepak* and *Manoj Kumar* cases, *supra*.

6. In view of the above precedents, this petition is allowed as sufficient ground is made out and accordingly the impugned order dated 21.7.2018 passed by the Superintendent, District Prison, Karnal is set aside. The petitioner, on his furnishing personal bond and surety to the satisfaction of the District Magistrate, Karnal shall be released on parole for a period of four weeks to be counted from the date of his release. The petitioner on expiry of the period of parole will surrender at the gate of the prison on the

date fixed by the District Magistrate, Karnal in the release order in terms of this order.

30.7.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No