

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

CWP No.3212 of 2018

Date of decision : 17.02.2018

Ashok

.....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Pardeep Solath, Advocate for the petitioner.

Mr. S. S. Mann, Senior DAG, Haryana.

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DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India read with Section 3 (1) (b) and (2) (b) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as 'the Act, 1988') for issuance of a writ in the nature of mandamus directing the respondents to grant parole to the petitioner for a period of four weeks to attend the marriage of his daughter, which is scheduled on 19.02.2018.

Learned counsel for the petitioner submits that the petitioner had been attending the Court proceedings regularly before the trial Court and there was no complaint against him. The presence of the petitioner is required to attend the marriage of his daughter not only for making arrangements but certain ceremonies are to be performed by him. He has

also relied upon judgments of this Court in cases ***Deepak Vs. State of Haryana and another 2014(4) RCR (Criminal) 531*** and ***Harinder Singh alias Bhura Vs. State of Haryana and others CRWP No.1535 of 2015 decided on 17.11.2015.***

Learned State counsel has verified the factum of marriage but opposes the submissions made by learned counsel for the petitioner on the ground that the petitioner is a hardcore criminal and he has overstayed for a period of 08 years 11 months and 12 days. There is possibility that he may abscond while granting parole.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file as well as relevant provisions of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012 and the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014.

Admittedly, marriage of petitioner's daughter is scheduled on 19.02.2018 and he has not only to make arrangements of the marriage but has to perform certain ceremonies which are required at the time of marriage being the father. It is not disputed that he has overstayed also as pointed out by learned State counsel. Sections 3 (1) (b) and 3(2) (b) of the Act, 1988 are relevant for deciding the controversy in the case, which are reproduced as under:-

3. (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) xx xx xx

(b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) xx xx xx

(d) xx xx xx

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed -

(a) xx xx xx

(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) xx xx xx

The claim of the petitioner has been declined only on the ground that he is a hardcore prisoner but no order has been passed. The hardcore prisoner has been defined under the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, which is reproduced as under:-

“2. (aa) 'hardcore prisoner' means a person, who -

(i) has been convicted of dacoity, robbery, kidnapping for ransom, murder with rape, serial killing, contract killing, murder or attempt to murder for ransom or extortion, causing grievous hurt, death or waging or attempting to wage war against Government of India, buying or selling minor for purposes of prostitution or rape with a woman below sixteen years of age or such other offence as the State Government may, by notification, specify; or;

(ii) during any continuous period of five years has been convicted

and sentenced to imprisonment twice or more for commission of one or more of offences mentioned in chapter XII or XVII of the Indian Penal Code, except the offences covered under clause (i) above, committed on different occasions not constituting part of same transaction and as a result of such convictions has undergone improvement at least for a period of twelve months:

Provided that the period of five years shall be counted backwards from the date of second conviction and while counting the period of five years, the period of actual imprisonment or detention shall be excluded.

Explanation - A conviction which has been set aside in appeal or revision and any imprisonment undergone in connection therewith shall not be taken into account for the above purpose; or

- (iii) has been sentenced to death penalty; or
- (iv) has been detected of using cell phone or in possession of cell phone/SIM card inside the jail premises; or
- (v) failed to surrender himself within a period of ten days from the date on which he should have so surrendered on the expiry of the period for which he was released earlier under this Act."

There is a specific provision for hardcore prisoners under Section 5A of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2012, which is reproduced as under:-

“5A. Special Provisions for Hardcore Prisoners – Notwithstanding anything contained in section 3 and 4, a hardcore prisoner shall not be released on temporary basics or on furlough:

Provided that a hardcore prisoner may be allowed to attend the marriage of his child, grand-child or sibling; or death of his grand parent, parent, grand parent-in-laws, parent-in-laws,

sibling, spouse or child, under the armed police escort, for a period of forty eight hours to be decided by the concerned Superintendent Jail and intimation in this regard with full particulars of hardcore prisoner being released, shall be sent to the concerned District Magistrate and Superintendent of Police within twenty four hours.”

Vide Section 2 of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2014, following proviso has been appended after Section 5A : -

“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.”

As per provisions mentioned above, even a hardcore prisoner is entitled to go on parole for a temporary period for 96 hours to attend the marriage of his daughter.

In the present case, keeping in view the factum of marriage and the relation of the petitioner being father and by considering aforesaid provisions, the petitioner can be allowed to go on parole for a period of 96 hours while in police custody.

Accordingly, the present petition is allowed and petitioner is granted temporary parole while in police custody for a period of 96 hours.

The Superintendent, District Jail, Faridabad is directed to make necessary arrangement for taking the petitioner in police custody.

Copy of this order be given to learned counsel for the petitioner under signature of the Bench Secretary of this Court.

17.02.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No