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

**CWP No. 3414 of 2018
Date of Decision: 14.02.2018**

ANOOOP

.....Petitioner

V/S

STATE OF HARYANA

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Sumit Sangwan, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner has applied for temporary release to attend marriage of his brother which is scheduled to be performed on 18.02.2018. The petitioner has been convicted for the offences committed under Section 376 of the IPC. He has been awarded life imprisonment and at present he is lodged in the Rohtak Jail.

Learned counsel for the petitioner has submitted that the petitioner had applied for temporary release before the Jail Superintendent, Rohtak but the matter was not decided one way or the other. Be that as it may, the petitioner has prayed for temporary release to attend the marriage of his brother.

During the course hearing, learned counsel for the petitioner has not denied that the petitioner falls under the definition of "hardcore prisoner" as defined under Section 2(aa) (i) (8) of the Haryana Good Conduct Prisoners (Temporary Release), Act, 1988 (hereinafter referred as 'the Act') for having allegedly committing rape with a girl below 16 years of age. The cases of

such type of prisoners are to be dealt with in terms of Section 5-A of the Act which reads as under: -

“5-A 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 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 Jail . He shall intimate within 24 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 hardcore prisoner, who has not been awarded death penalty, may be entitled for temporary release or fulough only if he has completed five years of sentence as a convict in jail excluding the under trial period and has not been awarded any minor or major penalty by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.

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

No doubt that the petitioner can pray for temporary release to attend the marriage of his brother but Section 5-A of the Act provides that if the convict is a hardcore prisoner but has not been awarded the death sentence, then he may be entitled for temporary release only if he has undergone five years imprisonment and has not been awarded any major punishment by the Jail Superintendent for the offence committed in Jail.

Learned counsel for the petitioner has fairly submitted that the petitioner has so far suffered custody of three years and eight months including the period spent in custody at the time of trial, therefore, he does not fulfill the condition prescribed under Section 5-A of the Act therefore, he is not even eligible to apply.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed, though without any order as to costs.

February 14, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

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