

C.W.P. No. 7921 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 7921 of 2018

DATE OF DECISION:02.04.2018

Nand Singh

.....Petitioner

Versus

State of U.T., Chandigarh and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ripudaman Singh Sidhu, Advocate
for the petitioner.

Mr. Aditya Sharda, AAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India read with Section 3 (1) (b) of the Punjab Good Conduct Prisoners (Temporary Release), Act, 1962 (hereinafter referred to as 'the Act, 1962') for issuing directions to release the petitioner on parole for a period of one week to attend the marriage of his nephew (sister's son), which is scheduled for 3.4.2018.

The petitioner was convicted and sentenced to undergo life imprisonment for offence punishable under Sections 302 and 380 IPC by the Sessions Judge, Chandigarh vide judgment dated 18.5.1999. Said judgment of conviction and order of sentence was challenged by way of filing an appeal before this Court, which was also dismissed. The petitioner

made a request for grant of parole to respondent-authorities but the same was rejected. Thereafter the petitioner has approached this Court by way of filing the present petition for grant of parole for a period of one week to attend the marriage of his nephew (sister's son), which is scheduled for 3.4.2018 .

Learned counsel for the petitioner contends that the petitioner being the maternal uncle is to perform certain ceremonies on the occasion of marriage of his nephew and his presence is required. There is no complaint either from the locality or from the jail authorities against the petitioner. The conduct of the petitioner inside the jail has been satisfactory and no other case is pending against him. Learned counsel further contends that the petitioner undertakes to abide by all the terms and conditions to be imposed upon him by this Court or by the jail authorities.

In response to notice of motion, reply on behalf of respondent-State of Punjab has been filed in Court and the same is taken on record.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He submits that recently the petitioner has availed six weeks parole w.e.f. 17.1.2018 to 1.3.2018 and has surrendered before the jail authorities on 1.3.2018. He further submits that the petitioner is not entitled for parole as it will become due now in the month of July, 2018. Learned State counsel also submits that as per amendment dated 29.1.2016, there is no provision to grant parole within a short period of less than three months.

Heard the arguments advanced by learned counsel for the parties and have also perused the documents available on the file.

The facts of the case are not disputed. Admittedly, the

petitioner was granted six weeks parole. He was released on parole on 17.1.2018 and surrendered before the jail authorities on 1.3.2018 only. As per Government of Punjab, Home Department (Jails) (Jail Branches), the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 No. 11/79/2012-3J/30 dated 29.1.2016, there is no provision to grant parole to attend the marriage function of the nephew. The petitioner will be entitled for parole only in the month of July, 2018.

The remission and parole are not the vested rights of the prisoners. In fact, these are privileges granted by the State to the convicted prisoners. Therefore, a convict prisoner cannot claim these two privileges as his vested rights. There is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by the Statute. On the other hand, a privilege is granted by the State under certain conditions and can equally be taken away by the State. The privilege can be given on certain specific grounds. Parole is a part of reformatory theory of punishment. It is not necessary that all the convicts must have the privilege extended to them. These benefits can be refused in case refusal is based on intelligent differentia and has a nexus to the object of the Rules. A refusal cannot be violative of Article 14 of the Constitution of India. A prisoner may be released temporarily by an officer appointed in this behalf by the State Government in case it is desirable for a sufficient cause. However, it is relevant to mention here that the parole can be granted twice in a year.

In the present case, the petitioner has availed parole in the month of January, 2018 and surrendered before the jail authorities on 1.3.2018. Moreover, it has also been brought to the notice of this Court that

he is not the only maternal uncle to perform certain ceremonies at the time of marriage but his two other brothers are also there, who can perform those ceremonies.

In view of facts as mentioned above, I am of the considered view that the petitioner is not entitled for parole as he has already availed six weeks parole recently and has surrendered before the jail authorities on 1.3.2018 only.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

April 02, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No