

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

CWP No.8122 of 2018

Date of decision : 20.04.2018

Gobind Ram

.....Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Dr. Banadana Trikha, Advocate for the petitioner.

Ms. Ambika Sood, DAG, Punjab.

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DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to grant parole for a period of six weeks to the petitioner to attend the marriage of his sister, which is fixed on 29.04.2018.

The marriage card has also been placed on record.

Learned counsel for the petitioner submits that the presence of the petitioner is necessary at the time of marriage of his sister as he is to perform certain ceremonies being the brother. Learned counsel also submits that under provisions of Section 3 (1) (b) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, the petitioner is entitled for six

weeks parole. Petitioner never misused any concession of bail/parole and he undertakes not to misuse this concession in case he is granted parole.

In response to notice of motion, reply has been filed in the Court today and the same is taken on record.

Learned State counsel has affirmed the factum of marriage of sister of the petitioner. He submits that presence of the petitioner is not required as there are two more brothers of the petitioner and they can perform the ceremonies at the time of marriage. Earlier the petitioner was granted parole for a period of four weeks with a direction to surrender on 4th July 2015 but he did not surrender on the date and absconded from parole. He was re-admitted in the jail after a delay of 8 days. Thereafter, again he was released on 22.12.2017 by granting six weeks parole. A direction was issued to him to surrender on 27.01.2018 but he did not surrender on 27.01.2018 and there was delay of one day as he overstayed the period of parole. One FIR No.72 dated 13.03.2017 under Section 52-A of the Prisons Act was also registered at Police Station City Sangrur.

Heard arguments of learned counsel for the parties and have also perused the documents on the file.

Admittedly, the petitioner is undergoing life imprisonment after conviction for offence punishable under Sections 302/460 IPC by learned Addl. Sessions Judge, Ludhiana vide judgment dated 24.04.2013. Thereafter, he filed criminal appeal, which is still pending before this Court. The present petition has been moved by the petitioner for grant of parole to attend the marriage of his sister on the ground that he has to perform certain

ceremonies being the brother. It is also not disputed and same is clear from the custody certificate that the petitioner was earlier granted parole on two occasions but he never surrendered well in time. He surrendered after the delay as the period of parole had already expired.

The remission and parole are not the vested rights of the prisoners. The privileges granted by the State to the convicted persons cannot be claimed as a matter of right. 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. A privilege is granted by the State under certain conditions but the privilege can equally be taken away by the State. The privilege can be given on certain specific conditions/grounds. Parole is a part of reformatory theory of punishment but it is not necessary that all the convicts must have the privilege extended to them. It can be refused but the refusal should be 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 convict may be released temporarily by an officer appointed in this behalf by the State Government but there should be a sufficient cause.

In the present case, the petitioner was granted concession of parole on two occasions but he overstayed as he did not surrender well in time on expiry of period of parole. Moreover, the petitioner is having two more brothers and his presence is not necessary to be required. His other two brothers can perform those ceremonies.

In view of the facts as mentioned above, there is no merit in the

contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is dismissed.

20.04.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No