

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

CWP No.8175 of 2018

Date of decision : 05.04.2018

Kulwant alias Monu

.....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. R. S. Dhull, Advocate for the petitioner.

Mr. S. S. Mann, Senior D.A.G., Haryana.

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DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for seeking issuance of a writ in the nature of mandamus directing the respondents to grant parole to the petitioner for a period of four weeks for the purpose of solemnization of his marriage with girl namely Priyanka. The marriage is fixed on 08.04.2018 and 09.04.2018. Copy of the wedding card (Annexure P-3) has also been placed on record.

Learned counsel for the petitioner submits that a written application dated 23.03.2018 (Annexure P-1) was submitted before the jail authorities. Even the girl namely Priyanka with whom the petitioner is going to marry, also submitted an application dated 23.03.2018 (Annexure P-2). An affidavit dated 23.03.2018 (Annexure P-5) was also filed by the girl

stating the factum and date of marriage.

In response to the notice of motion, reply has been filed by learned State counsel in the Court today and the same is taken on record. Factum of marriage has been affirmed but it has been denied that any application was moved by the petitioner or by the girl.

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

Admittedly, the petitioner is convict in case FIR No.438 dated 15.09.2015 under Section 302 read with Section 34 IPC and Section 25 of Arms Act registered at Police Station Meham, Distt. Rohtak. He was convicted and sentenced to undergo rigorous imprisonment for life with fine. The appeal filed against the judgment of conviction and order of sentence is still pending before this Court.

The provisions of Sections 3 (1) (b) and 3 (2) (b) of the Act are relevant, 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) a member of the prisoner’s family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grand-son, grand-daughter, brother, sister, sister’s son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for

sloughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(d) it is desirable to do so for any other sufficient cause.

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

(a) where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

(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) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks;

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks."

As per said provisions, the petitioner is entitled for parole for the purpose of his own marriage. It has not been brought to the notice of this Court orally or by way of reply filed in the Court today that petitioner has ever misused any concession granted to him or he remained absent, except in one case which is under Section 42 of the Prisons Act, P. S. Shivaji Colony, Rohtak. In that case the petitioner has been bailed out on 03.04.2018 by the order of Judicial Magistrate First Class, Rohtak. Although the claim of parole has been declined orally but there is no such order on record. The claim of the petitioner for release on parole can be refused only on the ground that same is likely to endanger the security of the State or the maintenance of public order. A convict is having a statutory

right to avail parole under Section 3 (1) (b) of the Act and same can be refused only on certain grounds but no such case has been made out for refusal.

Learned counsel for the petitioner undertakes to abide by all terms and conditions to be imposed by this Court or by the jail authorities. He also undertakes not to misuse the concession during this period.

Since it is a case of marriage of the petitioner himself and the girl with whom he is going to marry, has also given an application duly supported by an affidavit, the petitioner is entitled for parole for the purpose of his marriage for a period of four weeks.

Accordingly, the present petition is allowed and petitioner is directed to be released on parole for a period of four weeks starting from 06.04.2018 to 03.05.2018, subject to the satisfaction of the District Magistrate, Rohtak. He is directed to surrender before the jail authorities on expiry of said period *i.e.* on 04.05.2018.

However, the parole shall be subject to the following terms and conditions :-

- (i) The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release, he shall also inform his telephone number to the SHO of the police station concerned.
- (ii) The petitioner shall keep away from the area around the residence of the victim and his/her family members.
- (iii) Immediately upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.

- (iv) The period of parole shall be counted from the day after the date when the petitioner is released from jail.

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

05.04.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No