

CWP No.8942 of 2018

[1]

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

CWP No.8942 of 2018

Date of decision:17.04.2018

Neeraj Kumar @ Motu

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Pawan Kumar Hooda, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has applied for parole for a period of six weeks under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as the "Act") for various purposes, namely, to take care of his family, his father who is suffering from heart disease, to support his family to find a suitable match for his sister and for repair of his house.

The petitioner was tried in a case registered vide FIR No.96 dated 21.01.2013, under Sections 307/332/353/186/34 of IPC and 25/54/59 of the Arms Act, 1959. He was convicted and sentenced on 15.10.2015 and 17.10.2015 respectively for a period of 7 years. The appeal filed by the petitioner bearing CRM-S-4820-SB-2015 is pending adjudication.

Counsel for the petitioner has submitted that the petitioner has not availed any parole so far. However, his father Suresh Kumar made an application to the Superintendent, Central Jail, Hisar, who is arrayed as

respondent no.3 for considering his case for releasing him on parole. Although the petitioner has prayed for a direction to release him on parole for six weeks in terms of Section 3(1)(d) of the Act but as per Section 3(2)(b) of the Act, if a prisoner is to be released on parole on the ground specified in Sections 3(1)(b) and 3(1)(d) of the Act, the period of release cannot be more than four weeks.

Be that as it may, counsel for the petitioner has submitted that Rule 3 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter referred to as the “Rules”) provide the procedure for temporary release in case an application under Sections 3 or 4 of the Act is filed. Rule 3 of the Rules is reproduced as under:-

“3. Procedure for temporary release. (1) A prisoner desirous of seeking temporary release under section 3 or section 4 of the Act, shall make an application in form A-1 or form A-2, as the case may be, to the Superintendent of Jail. An adult member of the prisoner's family may also make such an application.

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate who shall forward the case with his recommendations to the Director General for grant of parole or otherwise. The releasing authority may issue to the Superintendent of Jail a duly signed and sealed warrant in Form-B ordering the temporary release of the prisoner specifying therein-

- (i) the period of release;
- (ii) the place or places which the prisoner is allowed to visit; and
- (iii) the amount of surety bond.”

According to the aforesaid provision, the convict himself or an adult member of his family may make an application for temporary release either under Section 3 or Section 4 of the Act in form A-1 or form A-2 to the Superintendent of Jail. After such an application is filed to the Superintendent of Jail, he has to forward the said application along with his report to the District Magistrate who would further forward the case with his

recommendations to the Director General of Prisons for grant of parole or otherwise. The term “District Magistrate” is defined in Section 2(a) of the Act to mean the District Magistrate of the District within whose jurisdiction the prisoner after his temporary release under the Act is likely to reside during the period of his release and the term “Director General” is also defined under Rule 2(b) of the Rules to mean the Director General of Prisons, Haryana.

According to Rule 3(2) of the Rules, the Superintendent of Jail is only an instrumentality to forward the application along with his report to the District Magistrate, who would also forward the case of the convict who has desired for his release on parole, with his recommendations to the Director General of Prisons, Haryana, who would be the ultimate authority to grant the parole or otherwise.

However, vide notification No.S.O.63/H.A.28/1988/Ss. 3 and 4/2007 dated 30.07.2007, the Governor of Haryana has delegated the powers to the Divisional Commissioner of the concerned division to exercise the powers of the State Government under Section 3(4) and Section 4(1) of the Act on the grounds specified thereunder for the offences of murder, dacoity, rape, rape with murder, dowry death cases and NDPS Act and to the Superintendent of Jail of the concerned district wherein the prisoner is detailed to exercise the power of the State Government only in respect of the grounds specified in Section 1(1)(a) of the Act and to the District Magistrate of the concerned district to exercise all the powers under the above sections except those, where Divisional Commissioner and Superintendent of Jail has been authorized as above.

In view of the aforesaid scheme of the Act and the Rules, the

petitioner cannot straightway ask for his release on parole from this Court by filing a writ of *mandamus* especially when there is no order either passed by the Superintendent of Jail or District Magistrate or the Divisional Commissioner or the Director General of Prisons. Therefore, the only prayer which can be considered by this Court is to issue a direction to the Superintendent of Jail, Central Jail, Hisar, to whom the application is filed either by the convict or an adult member of his family, to proceed in terms of Rule 3(2) of the Rules expeditiously so that the purpose, for which the petitioner is seeking parole, may not be defeated.

Thus, taking into consideration the aforesaid facts and circumstances and the mandate of law, the present petition is hereby disposed of with a direction to respondent no.3-Superintendent of Jail, Central Jail, Hisar, to proceed immediately in terms of Rule 3(2) of the Rules and forward the application of the petitioner along with his report to the District Magistrate. In case respondent no.3 makes the report within a period of one week from the date of receipt of certified copy of this order, respondent no.2- District Magistrate shall also make his recommendations within a period of one week thereafter to the Divisional Commissioner or the Director General of Prisons, Haryana, as the case may be, who is also directed to take a decision on the recommendations of the District Magistrate and the report of the Superintendent of Jail within a period of seven days thereafter.

April 17, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No