

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

CWP-31376-2018 (O&M)

Date of decision : 20.12.2018

Amit @ Sunda

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vijay, Advocate for the petitioner.

Mr. Sandeep Vashisth, DAG, Haryana.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Heard.

Petitioner is undergoing life imprisonment after being convicted under Sections 302, 120-B and 364 and 201 of the Indian Penal Code and Sections 27, 54, 59 of the Arms Act, vide judgment of conviction and order of sentence dated 22.12.2016 passed by learned Additional Sessions Judge, Jhajjar. Appeal i.e. CRA-D-156-DB-2017 filed by the petitioner is pending before this Court.

In the present petition, petitioner is seeking parole under Section 3(1) (b) and (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short 'the Act') for four weeks to enable the petitioner to solemnize his marriage in his native village at Village Jahangirpur, District Jhajjar, Haryana.

On the last date of hearing, notice was issued to State of Haryana and State was directed to submit the reply regarding the earlier parole availed by the present petitioner.

State has filed the written statement of Anil Kumar, Deputy Superintendent, District Prison, Jhajjar on behalf of respondents No. 1 and 2. State in its reply has stated that it is verified that the marriage of the petitioner is fixed for 28.12.2018. Petitioner has already availed 15 days parole for house repair from 5.6.2018 to 21.6.2018 under Section 3(1) (b) of the Act during this calendar year.

It is further stated that under clause 3(1) (a), (b) and (d) of the Act, parole can be availed only once except the clause (c) of the Act for which there is a special provision to grant parole more than once but not exceeding the period of six weeks. Report of the SHO regarding verification of the marriage is also placed on the file.

Learned counsel for the petitioner contends that petitioner has filed an application before the Superintendent of Jail, District Jhajjar. However, the State has not stated anything about the same. The application for grant of parole is to be moved before the Superintendent of Jail, District Jhajjar, who has got the character role of the convict with him and then the matter has to be considered and decided as per Rule considering the fact that whether the petitioner is entitled to parole or not, after having completed the requisite sentence.

Learned State counsel has contended that the petitioner can avail parole only once under Section 3(1) (a) (b) or (d) of the Act. Relevant provisions of the Act are as under: -

3. Temporary release of Prisoners on certain grounds:-

- (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, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or
- (c) the temporary release of the prisoner is necessary for ploughing, 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.

(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner.

(4) The State Government may, by notification, authorize any officer to exercise its powers under this section in respect of all or any other ground specified there under."

A perusal of the said Section shows that though there is a specific provision that the prisoner can avail parole more than once under Clause (c) of the Act i.e. for agricultural purpose for the period not exceeding six weeks. However, in the said Section there is no bar that for the reasons mentioned in the Clause 3 (1) (a), (b), (c) and (d) of the Act, petitioner cannot avail parole more than once if the necessity arises, provided that total period of parole will not exceed the period mentioned in the said Clause. In the present case, petitioner has already availed parole for house repair for the period of 15 days under Clause 3(1) (b) of the Act for which he could avail parole for four weeks. Therefore, he is still entitled to 3½ weeks parole on the grounds mentioned in clause 3(1) (a) and (b) of the Act. The hyper technical interpretation of the said Act cannot be given to the provisions of Section 3 of the Act.

In view of above, present petition is allowed and the petitioner is directed to file an application before the Superintendent of Jail, Jhajjar, District Jhajjar is directed to take appropriate action on the application, if so received, earlier and if the application filed by the petitioner is not received intimate the convict that he is entitled to file fresh application which shall be obtained on the same day and sent to the competent authority which shall be attended to on the same day.

Since the entire verification has been done, District Magistrate, Jhajjar and the Commissioner concerned shall take decision within one week preferably before 28.12.2018 when the marriage of the petitioner is fixed.

Disposed of.

Copy of this order be given under the signatures of the Bench Secretary to both the parties and also to the Superintendent, District Jail, Jhajjar through fax for compliance.

(KULDIP SINGH)
JUDGE

20.12.2018
preeti

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