

CWP-8043-2019

[1]

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

**CWP No.8043 of 2019 (O&M)
Date of decision: April 01, 2019**

Rajesh Kumar @ Pamna @ Pawan

...Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Baldev Singh Dhillon, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent, District Jail, Yamuna Nagar dated 19.3.2019 (Annexure P-4) whereby the application for release of the petitioner on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing rigorous imprisonment for twenty years in case FIR No.168 dated 15.5.2016 under Sections 363, 366A, 376-D, 365, 506 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012, Police Station Farakpur, district Yamuma Nagar after his conviction by the Trial Court on 05.09.2017/08.09.2017.

The petitioner submitted an application to the Superintendent, District Jail, Yamuna Nagar for grant of parole to attend the marriage of his sisters. The Superintendent, District Jail, Yamuna Nagar has rejected the application on the

ground that the petitioner falls under 'Hardcore Prisoner' category. He has not completed five years of his sentence including two years of under-trial period which is mandatory as per sub-section (2) of Section 5A of Haryana Good Conduct Prisoners (Temporary Release) Act 1988 as amended in 2013 (herein for short 'the Act'). The impugned order further states that the petitioner can only be released in police custody to attend the marriage of his sisters.

Learned counsel for the petitioner has argued that the marriage of two younger sisters of the petitioner, namely Sonia Devi and Paramjit Kaur is fixed for 21.4.2019. Marriage card is attached as Annexure P-2. The right arm of petitioner's father was fractured in an accident. His mother is an illiterate lady unable to manage the affairs of the marriage. The brother of the petitioner is drunkard and unfit for such a responsibility.

In the reply, it is stated that the petitioner is a 'Hardcore prisoner'. As he has not completed the mandatory five years of imprisonment in jail including maximum two years of the under-trial period he is not entitled to the concession of parole, at this stage.

Section 5A of the Act is the special provision, which deals with temporary release of hardcore prisoners. The relevant part thereof is reproduced below:

“5A. Special provisions for temporary release of hardcore prisoners.--

(1) Notwithstanding anything contained in Sections 3 and 4, no hardcore prisoner shall be entitled to temporary release or furlough:

provided that a hardcore prisoner may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-law, parent-in-laws, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours, to be decided by the concerned

Superintendent of Jail:

xxx xxx xxx

(2) *Notwithstanding anything contained in sub-section(1), a convicted hardcore prisoner who has not been awarded death penalty, may be entitled for temporary release or furlough only if he has completed his five years imprisonment and has not been awarded any major punishment by the Superintendent of Jail, as judicially appraised by the concerned District and Sessions Judge.*

Provided that the five years imprisonment period shall not include imprisonment during trial period for more than two years, while counting five years of imprisonment.

Provided further that if the prisoner so released under this sub-section violates any condition of temporary release or furlough, he shall be debarred from such release in future.”

As per the first proviso to sub-Section(1) of Section 5A of the Act a 'hardcore prisoner' may be released on temporary basis to attend the marriage of his grand child or sibling, or death of his grand parent, parent, grand parent-in-laws, parent-in-law, sibling, spouse, child or grand child under an armed police escort, for a period of forty-eight hours.

Accordingly, this petition is allowed. The respondents are directed to release the petitioner for 48 hours (20.4.2019 to 22.4.2019) under an armed police escort, to enable him to attend the marriage of his sisters, which is scheduled for 21.4.2019.

April 01, 2019

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No