

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

**CWP No. 10285 of 2019
Date of decision: 18.04.2019**

Satbir @ Kala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. H. P. S. Chopra, Advocate
for the petitioners.

Mr. B. S. Virk, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under article 226 of the Constitution of India read with Section 3(1)(a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, is for grant of four weeks' parole to the petitioner on account of marriage of his niece, namely Sonia, which is fixed for 20.04.2019.

Learned counsel for the petitioner submits that the petitioner, being the only maternal uncle, has to perform certain rituals and ceremonies of the marriage of his niece Sonia and he has already moved an application for grant of parole, however, no action has been taken thereunder.

Notice of motion.

Mr. B. S. Virk, DAG, Haryana, who is present in Court, accepts notice on behalf of the respondents-State and in post lunch session, he has produced on record the custody certificate and on oral instructions has opposed the prayer of the petitioner on the ground that since the petitioner has not completed one year of sentence after his conviction, he cannot be

granted parole.

In reply, learned counsel for the petitioner has submitted that though as per custody certificate, the petitioner has completed 11 months and 12 days of sentence in the present FIR No. 952 of 2015, however, the petitioner was also convicted in FIR No. 944 of 2015 for a period of seven years in which, his sentence was suspended, vide order dated 20.12.2018 passed in CRM-24843-2018 filed in CRA-S-3108-SB-2016.

Learned counsel for the petitioner has further submitted that though the sentence of the the petitioner has been suspended on 20.12.2018, however, he could not furnish the bail/surety bonds as his sentence in the present case was not suspended.

Learned counsel for the petitioner has further submitted that from the date when the sentence of the petitioner was suspended in FIR No. 944, vide order dated 20.12.2018, the jail authorities are bound to consider the further custody period of the petitioner from 21.12.2018 onwards in the present FIR and in that eventuality, the petitioner would be completing one year of sentence.

Learned counsel for the petitioner has relied upon ***Mahavir vs. State of Haryana and others, 2012 (4) RCR (Crl.) 230***. The operative part of the order reads as under:

“The present writ petition has been filed under Article 226 of the Constitution of India praying that the respondents be directed to grant emergency parole to the petitioner to enable him to attend the marriage ceremony of his daughter namely Anju, under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as “the Act”). It is averred that in case FIR No.64 dated 15.05.1999,

under Sections 363/366/376/506 IPC, registered at P.S. Hassanpur, the petitioner was convicted vide order dated 05.05.2001 by the Court of Addl. Sessions Judge, Faridabad and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/-. It is stated that wedding of daughter of the petitioner namely Anju is scheduled to be held on 25.04.2012. In support thereof, the petitioner has annexed a wedding card (Annexure P2) with the writ petition. Notice of this writ petition was issued and the State has filed reply thereto, by way of affidavit of Kulbir Singh, Superintendent, District Jail, Faridabad. It is stated therein that since the petitioner has not completed one year of his imprisonment, he cannot be granted parole. The State has relied upon Rule 4(1) of Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter referred to as "the Rules") and it reads as under:- "Rule 4(1) - A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the Act." Learned counsel for the petitioner has submitted that by invoking Rule 4(1) of the Rules, the petitioner cannot be denied parole. In support of this contention, reliance has been placed upon a judgment rendered in Ranjit Singh v. State of Punjab and Others Recent Criminal Reports 388. It was held therein that parole can be denied to the accused only on the grounds as specified in Section 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Thus, in view of the settled legal proposition that the Rules cannot override the provisions of the Act, the State was not justified in declining parole to the petitioner on the ground that he has not completed the requisite period of one year of his imprisonment. Even

otherwise, the stand taken by the State is very harsh. The emergency parole is granted to the convict to attend various situations over which he has no control i.e. death or fixation of marriage of a relation. To say that the sister should postpone the marriage of her son or daughter, till the completion of one year of imprisonment by the convict so that she/he is able to attend the marriage, is demanding more than required. Rule 4 (1) of the Rules may be invoked in case of parole which is to be granted for attending agricultural pursuits or house repairs which are recurring periodical feature in the life of human being and over which the convict has control or can plan in advance. Hence, stand of the State that the petitioner has not completed one year of his imprisonment is untenable. Hence, the present petition is disposed of by directing the State to reconsider the request of the petitioner for grant of parole and decide the same by 24.04.2012 by passing a reasoned order without invoking Rule 4(1) of the Rules.”

Learned counsel for the petitioner has further submitted that the case of the petitioner is squarely covered by the aforesaid judgment and the petitioner cannot be denied parole by citing Rule 4(1) of the aforesaid rules as the petitioner has applied for emergency parole on account of marriage of his niece.

After hearing learned counsel for the parties, I find merit in the present petition in view of the judgment rendered in *Mahavir's case (supra)*.

It has already been held by this Court that the Rules cannot override the provisions of the Act and the parole can be denied to an accused only on the grounds as specified in Section 6 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

Since the petitioner is seeking parole on account of marriage of his niece and this fact is not disputed by learned State counsel, considering the fact that his sentence was suspended by this Court in FIR No. 944 of 2015 though he could not furnish the bail/surety bonds, therefore, subsequent thereto, his sentence should have been counted in the present FIR where as per custody certificate, he has completed 11 months and 12 days of sentence and if the sentence of the petitioner is calculated from 21.12.2018 onwards in the present FIR, he has completed one year of sentence.

In view of the above, this petition is allowed and the respondents are directed to release the petitioner on parole on 19.04.2019, subject to his furnishing bail/surety bonds to the satisfaction of the District Magistrate, concerned.

The petitioner will surrender before the Superintendent, District Jail, Kurukshetra on 18.05.2019 at 10:00 AM.

18.04.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No