

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

**CWP No. 10279 of 2019
Date of decision: 18.04.2019**

Gulab Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

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

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of three weeks' parole to the petitioner to enable him to perform the last rites/rituals/Terahvi ceremony of his real brother, who had died on 14.04.2019.

Brief facts of the case are that the petitioner is a convict in FIR No. 334 dated 30.07.2001, under Sections 302, 148, 323, 324, 506 and 149 of the IPC and was sentenced to life imprisonment under Section 302 IPC by the trial Court. However, in criminal appeal bearing CRA-D-348-DB-2003, the sentence awarded to the petitioner was reduced to 10 years by holding him guilty of offence punishable under Section 304-II IPC.

Learned counsel for the petitioner submits that the petitioner has applied for parole for the purpose of attending/performing the last rites of his real brother who had died on 14.04.2019 and Terahvi ceremony is fixed for 22.04.2019, however, the application of the petitioner was declined.

Reply, by way of affidavit of Superintendent Jail, District Jail, Kaithal, is filed in Court today. Para 8 of the reply reads as under:

“It is also mentioned here that the petitioner/convict has not completed his one year of sentence and not earned his 1st AGCR. So, he is not entitled for parole as per section 4(1) of Haryana Good Conduct Prisoner (Temporary Release) Rules, 2007 which is reproduced as under: “A Prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after conviction and has earned his first annual good conduct remission under the Act” and in this case, the petitioner/convict has neither completed his one year of imprisonment after conviction nor earned his first annual good conduct remission, hence not entitled for parole as per above said Parole Act. The copy of the Section 4(1) of the notification dated 18.12.2007 is annexed as Annexure R-2.”

However, in the report, submitted by the Inspector/SHO, Police Station Titram, District Kaithal, it is stated that the brother of the petitioner, namely Satish son Inder Singh, has died on 14.04.2019 and as per the report given by the present Sarpanch of the village Deoban, no person in the village has any objection if the petitioner is granted parole to attend/perform the last rites of his brother.

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 death of his real brother.

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.

The affidavit filed by the Superintendent, District Jail, Kaithal is silent about any bar under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and the rules providing minimum one year imprisonment is not in consonance with the Act and is very harsh in a given case where a convict applies for emergency parole on account of a death in the family or in a similar circumstance.

In view of the above, this petition is allowed and the respondents are directed to release the petitioner on parole on 20.04.2019, subject to his furnishing bail/surety bonds to the satisfaction of respondent No. 3- District Magistrate, Kaithal.

The petitioner will surrender before the Superintendent, District Jail, Kaithal on 11.05.2019 at 10:00 AM.

18.04.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No