

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14784 of 2019

Date of Decision: 11.09.2019

Pal Singh

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Gurinder Singh Goraya, Advocate
for the petitioner.

Mr. Kapil Bansal, D.A.G. Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India for issuing a writ in the nature of certiorari for quashing the order dated 24.05.2019 (P-3) passed by respondent No.3 whereby request of the petitioner for grant of parole has been denied so also it is prayed that a writ of mandamus be issued directing the respondents to grant emergency parole to the petitioner for a period of two weeks under Section 3(1) (a) & (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 and Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007.

2. The petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of seven years under Sections 18 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 in case FIR No.436 dated 03.09.2016 registered at Police Station, Pehowa, District Kurukshetra.

3. Learned counsel for the petitioner submits that the mother of the

petitioner passed away on 15.05.2019 and the bhog ceremony was fixed for 26.05.2019. The petitioner approached this Court for grant of emergency parole through CWP No.13647 of 2019 which was disposed of on 23.05.2019 with a direction to move an application before the jail authorities. But respondent No.3 rejected the request of the petitioner vide impugned order dated 24.05.2019 (P-3). The petitioner has had to approach this Court again through the present petition.

4. Learned counsel further submits that it is very unfortunate that the petitioner being elder son of his mother could not attend and participate in the last rites of his mother. Learned counsel states that the petitioner may now be allowed parole to meet his family after the death of his mother.

5. On the other hand, learned State counsel while opposing the prayer made by the learned counsel for the petitioner argues that as per Para 4(1) of the Haryana Good Conduct (Temporary Release) Rules 2007, a prisoner can apply for parole only after completing one year of imprisonment after his conviction and he has earned first annual good conduct remission under the Act. Since the petitioner does not fulfill the said condition, therefore, he is not entitled to parole, for which impugned order dated 24.05.2019 (Annexure P-3) has been passed by rejecting his prayer.

6. The restriction of one year imprisonment after conviction to be eligible for temporary release as has been imposed by way of the rules cannot supersede the substantive provisions of the Act i.e. the Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988. A Division Bench of this Court in '*Deepak vs. State of Haryana & another*', 2014(4) RCR (Criminal) 531 held as follows:-

“5. We have given our thoughtful consideration to the matter. It may be noticed that in terms of Section 3(1)(a) of the Act, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was published in the Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act.”

7. In view of the above, this Court is of the considered view that the impugned order cannot sustain. The petition is allowed. The impugned order dated 24.05.2019 (P-3) is quashed. The petitioner is granted parole for two weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as may be required in the Jail Manual toward the ends of securing the presence of the petitioner in jail after the period of parole, is over and done with and the temporary release is not misused.

8. Ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

11.09.2019

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