

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

CWP No. 17997 of 2019

Date of Decision: 19.08.2019

Sunil Dutt @ Gullu

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Sandeep Vashisht, DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. Petitioner seeks emergency parole 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 and also seeks quashing of the order dated 02.07.2019 (Annexure P-1), passed by respondent No. 4-the Superintendent of Jail, District Jail, Yamuna Nagar whereby the application moved by the petitioner for grant of four weeks emergency parole to look after his mother, who is suffering from heart problem and has been advised surgery, was declined.

2. The petitioner was convicted under Sections 120-B, 211, 327, 342, 420, 388 & 506 IPC and sentenced to undergo rigorous imprisonment for 7 years by the learned Addl. Sessions Judge, Yamuna Nagar vide order dated 17.01.2019.

3. The petitioner had applied for parole through application submitted by his mother before respondent No.4 for grant of parole in order to get her treated stating that she required a heart bypass surgery. The request has been declined vide order dated 02.07.2019 passed by the Superintendent of Jail, District Jail, Yamuna Nagar.

4. In the written statement filed on behalf of the respondents, the Deputy Superintendent, District Jail, Yamuna Nagar has reiterated the stand taken in the impugned order for rejecting the claim of the petitioner. The parole case of the petitioner was rejected primarily on the ground that he has not completed one year of his imprisonment after conviction as is mandatory in Rule 4 (1) of the Haryana Good Conduct Prisoners' (Temporary Release) Rules, 2007. However, as per report of the S.H.O. Farakpur, the fact regarding illness of mother of the petitioner and that she has to undergo bypass surgery has been admitted in the written statement.

5. Learned counsel for the petitioner argues that the father of the petitioner had already expired and there is no other male member at home who can look after the mother of the petitioner.

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 dated 02.07.2019 cannot sustain. The petition is allowed. The impugned order dated 02.07.2019 (P-1) is quashed. The petitioner is granted parole for four weeks from the date of release to the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as required to secure the presence of the petitioner in the jail after the parole period is over.

(RAJIV NARAIN RAINA)
JUDGE

19.08.2019
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Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes/No