

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

CWP-30331-2018 (O&M)

Date of Decision: April 01, 2019

Bhupinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ashish Pannu, Advocate
for the petitioner.

Ms. Karanbir Singh, AAG, Punjab.

HARINDER SINGH SIDHU, J.

Present petition has been filed for quashing/setting aside the order dated 27.09.2018 (Annexure P-2) passed by the Superintendent, District Jail, Sangrur, whereby the application of the petitioner for grant of parole for house repair has been declined.

The petitioner has been convicted under Section 22 of the NDPS Act vide judgment and order dated 13.03.2018 of the Special Judge, Sangrur. He has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-.

He submitted an application to Superintendent District Jail, Sangrur on 21.09.2018 for grant of parole for six weeks. The application has been rejected vide order dated 27.09.2018. It has been stated that the petitioner was shifted to Central Jail, Bathinda from District Jail, Sangrur on 11.11.2018. He had quarreled with fellow inmates. Thereby he had committed a jail offence for which he was awarded punishment of confining

him in a separate barrack from other inmates for one month. The said punishment had been judicially appraised by the Chief Judicial Magistrate, Sangrur vide order dated 17.08.2018. Therefore as per orders of the Addl. Director General of Police (Prisons) Punjab dated 17.04.2002 he is not entitled to parole for one year i.e., upto 23.05.2019.

The petitioner has filed CM No.4311 of 2019 stating that during the pendency of this petition, his father Ram Singh fell seriously ill. An urgent bypass surgery was conducted on 12.02.2019 at Ivy Hospital, Mohali. After the bypass surgery his father needs regular check up and an attendant to look after him. The petitioner is the only son and he be released on parole to attend to this ailing father.

Sh. Karanbir Singh AAG Punjab has placed on record a report from the SHO P.S. City-I Malerkotla. It has been stated that the father of the petitioner was operated on 15.02.2019. He was discharged on 19.02.2019. He is now staying in his house. He has not fully recovered and keeps lying on the bed. There is no male member in the family who can look after his father.

The only ground to deny parole to the petitioner vide the impugned order is that he had committed a Jail offence and consequently he cannot be released on parole for a period of one year as per the orders of the Addl. Director General of Police, Prisons Punjab dated 17.04.2002.

A somewhat similar question was considered by a Division Bench of this Court in **Gurpreet Singh v. State of Punjab** 2012 (3) R.C.R.(Criminal) 504. In that case the petitioner had sought emergency parole as his mother was unwell and had to undergo surgery. Parole was

denied on the ground that as per sub-rule (2) of Rule 3 of the Punjab Good

Conduct Prisoners (Temporary Release) Rules 1963 a prisoner could not be released unless he has after his conviction maintained good conduct for at least four months.

This Court allowed parole holding as under:

7. The provisions of Section 3(1)(a) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act' for short) provides for temporary release of prisoners on certain grounds.

Section 3(1)(a) of the Act reads as under :-

3. Temporary release of prisoners on certain grounds :-

(1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that:-

(a) "a member of the prisoner's family had died or is seriously ill"

8. The above provisions provides for temporary release of prisoners for a period specified in sub-section (2) if the State Government is satisfied that a member of the prisoner's family had died or is seriously ill. In terms of sub-section (2) in case a prisoner is to be released on the ground specified in Clause (a) of Section 3 (1), the period of release is not to exceed two weeks.

9. The mother of the petitioner (prisoner) has been advised an operation on account of her cardiac blockage. The petitioner applied for grant of emergency parole vide application dated 27.09.2011 (Annexure P-1). The outdoor patient card (Annexure P-2) of his mother was also enclosed for perusal. However, temporary release on parole has been declined to the petitioner in view of the proviso to sub-rule (2) of rule 3 of the Rules. Rule 3 of the Rules provides the procedure for temporary release and it envisages the procedure to be followed and the application form to be filled in by a prisoner for temporary release as also the steps to be taken by Superintendent of Jail for forwarding the application. The proviso to sub-rule (2) of rule 3 of the Rules was inserted by a notification dated 23.09.2003 and it envisages that no such application shall be processed by the Superintendent of Jail, unless the prisoner has maintained good conduct after his conviction at least for four months in jail. The provision of rule 3 of the Rules are procedural provisions, which are directory

and not mandatory. The provisions of Section 3(1)(a) of the Act, however, are substantive provisions which would prevail over the procedural provisions of the Rules. The petitioner, as already noticed, has been convicted and sentenced by the learned Sessions Judge, Roopnagar vide order dated 08/10.09.2011. Against the order of his conviction and sentence, the petitioner has filed Criminal Appeal No.908-DB of 2010. A perusal of the order dated 08.09.2011 passed by the learned Sessions Judge, Roopnagar shows that the petitioner-Gurpreet Singh was in custody during trial while sentencing him to imprisonment vide order dated 10.09.2011, the sentences that were imposed were ordered to run concurrently.

10. The object of Section 3 of the Act is to provide for temporary release to prisoners in case of certain eventualities which are that (a) a member of the prisoner's family had died or is seriously ill; or (b) the marriage of the prisoner's son or daughter is to be celebrated; or (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or any other land cultivated by him and no friend of the prisoner or member of the prisoner's family is prepared to help him in this behalf in his absence; (d) it is desirable for any other sufficient cause. Therefore, an illness of a family member of a prisoner would warrant temporary release of the prisoner so as to enable the prisoner to provide for his treatment.

11. In the reply, that has been filed, it is stated that the mother of the petitioner is not admitted in the PGI, Chandigarh and that she is at her home and in sound health. In fact, it is not the case of the petitioner that his mother was admitted in PGI, Chandigarh. It is only that an operation has been advised and she was asked to be admitted on 01.10.2011. The OPD Card (Annexure P-2) was attached with the application (Annexure P-1) for seeking temporary parole. The Superintendent of Central Jail, Patiala has not taken into consideration the said application (Annexure P-1) and the OPD Card (Annexure P-2). Rather, it is stated, that report regarding ill-health of the petitioner's mother was sought telephonically from the SHO, Police Station City Ropar and he reported that the mother of the petitioner was not admitted in the PGI, Chandigarh and in fact, she is at her home and in sound health. The said report based on telephonic instructions without taking into consideration the application (Annexure P-1) and the OPD Card (Annexure P-2) is hardly of any consequence. The relevant material i.e. the application (Annexure P-1) and the OPD Card (Annexure P-2) submitted by the petitioner have indeed not been taken into consideration.

12. We are even otherwise of the view that the proviso added to sub-rule (2) of rule 3 of the Rules would not supersede the

substantive provisions of the Act specially in a case where the release of the petitioner is sought immediately so as to enable him to arrange for the treatment for his mother. In case of death or serious illness in the family of the prisoner would warrant immediate release and a waiting period of four months after conviction would in some cases, as in the present case, defeat the legislative intent and mandate, which is not to be circumvented by procedural rules.”

It was held that a proviso added to a Rule framed under the Act could not supersede the substantive provisions of the Act which contained no such prohibition. What holds good for a Rule would equally apply to instructions which are de hors the Act.

As per Section 3(1)(aa) read with Section 3(2)(b) of the Punjab Good Conduct Prisoner's (Temporary Release) Act, 1962 a prisoner is entitled to temporary release for a period of six weeks where father or mother is seriously ill.

Accordingly this petition is allowed. The impugned order is set aside. The respondents are directed to release the petitioner on parole for a period of six weeks subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. The petitioner shall surrender before the Jail authorities on the expiry of the parole period.

April 01, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No