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

**CWP No.30861 of 2018
Date of decision: 15.02.2019**

Ajaib Singh

....Petitioner

Vs.

State of Haryana and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

**Present: Mr. Susheel Gautam, Advocate
for the petitioner.**

Mr.Ramesh Kumar Ambavta, AAG, Haryana.

HARINDER SINGH SIDHU, J.

Ajaib Singh - petitioner, who is undergoing imprisonment for life in FIR No.208 dated 9.6.2013 under Sections 323, 324, 341 and 302 IPC registered at Police Station Nissing, District Karnal has filed the instant petition under Articles 226/227 of the Constitution of India praying for his release on parole for four weeks for treatment of his wife and that the order dated 28.11.2018 (Annexure P-3) passed by the Superintendent Jail, District Jail, Kaithal rejecting his application for release on parole for the aforementioned purpose, be quashed.

The Criminal Appeal No.CRA-D-470-DB of 2018 filed by the petitioner against his conviction and sentence is pending for final adjudication. He applied for parole for the treatment of his wife (Operation of eye), which was rejected by the Superintendent Jail District Jail Kaithal stating that since the petitioner has not completed one year of sentence after conviction, he is not entitled to parole.

the Haryana Good Conduct Prisoner (Temporary Release) Rules 2007 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 annual good conduct remission under the Act. It has also been stated that as per report of Jail Medical Officer submitted after perusal of the OPD card from Kalpana Chawla Government Medical College, Hospital Karnal, Amarjit Kaur wife of the petitioner has been advised eye cataract operation. It is however stated that cataract operation is a minor surgery and is not an emergency.

Thus the fact that the wife of the petitioner needs to undergo eye surgery for cataract has not been denied. The only objection to the grant of parole is Rule 4 of the Rules.

The reliance by the respondents on Rule 4 of the 2007 Rules to deny parole to the petitioner cannot sustain. A Division Bench of this Court in CRWP No.677 of 2014 '**Deepak Vs. State of Haryana and others** (decided on 03.06.2014), held that the restriction of one year of imprisonment after conviction to be eligible for temporary release had been imposed by Rule 4 of the 2007 Rules and it could not supersede the substantive provisions of the Act, which contained no such restriction. To the same affect is Division Bench judgment of this Court in **Aman alias Kala vs. State of Haryana and others**, 2017 (3) RCR (CrI) 279.

In view thereof, the impugned order declining parole to the petitioner on the ground that he has had not completed one year imprisonment after conviction cannot sustain.

Consequently, the present petition is allowed. The impugned order Annexure P-3 is set aside. The respondents are directed to re- consider the case of the petitioner for grant of parole afresh in view of the observations hereinabove.

While deciding the case the respondents will disregard the requirement of Rule 4(1). This be done expeditiously preferably within a period of three weeks from the date of receipt of a certified copy of this order so that purpose of the release is not frustrated.

February 15, 2019

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether speaking/reasoned: Yes

Whether Reportable: Yes/No