

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29666-2019

Date of Decision:19.11.2019

Rohit Kumar @ Babbu

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Nandan Jindal, Advocate
for the petitioner

Ms.Anu Pal, DAG Punjab
for the respondents

RAJIV NARAIN RAINA, J. (ORAL):

1. Through this petition, the petitioner has sought a writ in the nature of mandamus directing the respondents/State to grant the benefit of emergency parole to the petitioner for a period of two weeks to attend the marriage of his brother-in-law (brother of wife) due to be solemnized on 22.11.2019.

2. When the matter came up for hearing on 16.10.2019, the following order was passed:

“The petitioner has prayed for parole to attend the wedding of his brother-in-law. He is the only male member in the family. His father-in-law expired in January 2019 for which he was granted parole by the jail authorities.

Issue notice of motion to the respondents.

On the asking of Court, Ms. Simran Grewal, AAG, Punjab accepts notice on behalf of the

respondents. Copy of paper book has been supplied to Ms. Grewal in Court today.

On being handed over the copy of petition and having gone through it, she submits that it is not pleaded in the petition or elsewhere in the Annexures that the jail authorities had granted the parole to the petitioner at the time of death of his father-in-law.

This fact is open for verification in the written statement to be filed.

List on 29.10.2019 for the State counsel to take instructions.”

3. Written statement on behalf of respondent No.3 has been filed in Court today, which is taken on record. It is stated therein that the petitioner had been granted emergency parole at the time of death of his father-in-law and he was released on parole w.e.f. 10.04.2019 to 25.04.2019. The written statement also discloses the extremely relevant fact that the petitioner has been granted parole by the authorities without raising any objection under Sections 3(1)(b) of the Punjab Good Conduct Prisoners (Temporary Release), Act, 1962 (for short, 'the Act') which limits consideration in parole cases for marriage of son and daughter. That was also granted without raising objection that the petitioner is a “hardcore prisoner” serving sentence for conviction under Section 302 read with Section 376-D of the IPC. If the respondents have deemed fit to grant parole to the petitioner earlier this year on their own, without taking objection of hard core prisoner, then there is no reason why either the authorities at their own level or for this Court in these facts and circumstances cannot make such an order.

4. Section 5(A) of the Act, deals with certain cases where the prisoner is not entitled to be temporarily released on parole. The first non

obstante clause disentitles grant of parole to prisoners to whom the death sentence has been awarded or are classified as “hardcore prisoner”. A hardcore prisoner has been defined in Section 2(aa) of the Act to be a person confined in prison under a sentence of imprisonment who has been convicted of-

- (i)an offence of rape with murder under Section 376 read with Section 302 of the Indian Penal Code, 1860
- (ii)an offence punishable under Section 14 of the Protection of Children from Sexual Offences Act, 2012.

5. The petitioner falls in the category of hardcore prisoner but the State itself released him on parole earlier this year which amounts to waiving the objection and the argument from being raised against the petitioner by State contesting the present case. It is important to note on a reading of the relevant provisions of the Act that there is an exception carved out to Section 2(aa) in Section 1(b) containing the second non obstante clause to the effect; that notwithstanding anything contained in clause (a) hardcore prisoner may be allowed to be released temporarily on the specific grounds 1 (a) (b) of Sub Section (1) of Section 3. However, in such cases as commended by the Division Bench extra condition/s over and above the usual ones may be imposed on the prisoner at the time of temporary release or furlough after considering the facts and circumstances of the case.

6. Therefore, if the case is covered by Section 3 (1) (b) there is no absolute bar in Section 5(A) of the Act against a hardcore prisoner from being released on parole or furlough and this is how the Division Bench

judgment of this Court in the case of ***“Suresh Kumar @ Tidda vs. State of Punjab and others,” CWP No.2714 of 2011, decided on 13.12.2011*** was rendered when the petitioner therein had approached this Court for parole to attend the wedding of his sister even when the request did not fall in Section 3(1) (b) of the Act since sister is not mentioned in the provision. The Division Bench with the aid of Section 3(1)(d) which speaks of any other sufficient reason arrived at a conclusion that Suresh Kumar be allowed the benefit of emergency parole in terms of Section 3(1)(d) of the Act. Suresh Kumar was not a hardcore prisoner unlike the present petitioner and was serving sentence for murder. But this difference is of no consequence in the face of provisions for grant of emergency parole under Section 5(A) (b). I would, therefore, on careful consideration hold in favour of the petitioner in the matter of grant of parole to attend the wedding of his brother-in-law.

7. Had the wedding not been fixed to be solemnized on 22.11.2019 and there would have been sufficient time, I would have adopted the procedure in the operative part of the order of the Division Bench and asked the competent authority to decide the case and pass an order. But to wait for that order, will be the passing away of the wedding celebrations of the petitioner's brother-in-law. It would be counter-productive and will needlessly put the entire administrative machinery under pressure to pass an order within such a short time.

8. Accordingly, this petition is allowed. The petitioner is granted parole for seven days 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 jail after the period of parole, including adequate surety and any extra condition as found appropriate. The

jail authorities would release him ahead of the wedding day.

9. The petitioner will provide his contact number to the Station House Officer, Police Station- Division No.5, Jalandhar, and will remain in touch with the police station informing them of his arrival and whereabouts including departure to surrender in jail before the expiry of the period of parole.

10. A photocopy of the order be given to learned counsel for the petitioner under the signatures of Bench Secretary of this Court.

19.11.2019*neenu***(RAJIV NARAIN RAINA)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable-

Yes/No