

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

CWP-29821-2019

Date of Decision:22.10.2019

Kamal

....petitioner

Versus

State of Haryana and others

.....respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.S.Sheoran, Advocate
for the petitioner

Mr.Saurabh Mohunta, DAG Haryana

RAJIV NARAIN RAINA, J. (ORAL):

1. Through this petition, the petitioner has sought for quashing of the order dated 01/07.10.2019 (Annex P-3) passed by respondent No.2 whereby benefit of parole to the petitioner has been denied so also for issuance of a writ in the nature of mandamus directing the respondents/State to grant the benefit of parole to the petitioner for a period of four weeks to enable him to celebrate the wedding of his daughter due to be solemnised on 08.11.2019.

2. The petitioner was convicted and sentenced to undergo life imprisonment under Sections 148/149/323/324/326/302 IPC in case FIR No.71 dated 06.06.2001 registered at Police Station Bawal, District Rewari. In appeal he had been on bail till it was decided against him.

This Court converted the sentence in appeal from Section 302 IPC to

Section 304-I, IPC. His modified sentence will now run for 5 years.

3. Mr. Mohunta submits that the petitioner was admitted to jail on 15.02.2019 and, therefore, has not completed one year period post conviction which does not remove the bar created by Rule 4 of the Haryana Good Conduct Prisoner (Temporary Release) Rules, 2007 (for short, 'Rules 2007'). Though, Mr. Mohunta is right in citing the rule but this is not a case of a routine parole but a parole for an emergency situation i.e. to be at the wedding of petitioner's own daughter. I would therefore not allow Rule 4 of Rules 2007 to stand in the way of the petitioner for temporary release. His conduct in jail has not been adversely commented upon.

4. It is the consistent view of this Court well recognised by the judgment of the Division Bench of this Court in the case titled ***“Deepak vs. State of Haryana and another” 2014(4) RCR (Criminal) 531***, on the same point i.e. restriction of one year of imprisonment after conviction to be eligible for temporary release. The Bench has taken the view that this condition imposed by Rule 4 of the 2007 Rules which came into force on 18.12.2007, is not applicable there being no any such restriction in the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. The Division Bench held that rules cannot be superseded by substantive provisions of the law. Similar view was taken by another Division Bench on 05.09.2014 in CRWP No.1293 of 2014 titled ***“Rakesh vs. State of Haryana and others.”*** There are Single Bench judgments available which need not

burden this order.

5. Accordingly, the petition is allowed. Impugned order dated 01/07.10.2019 (Annex P3) is quashed. The reply filed today by Mr.Mohunta has been taken on record and copy supplied to the counsel who has pre-read the contents of the written statement and the objections taken therein. The petitioner shall be released on parole from 01.11.2019 and will surrender on 22.11.2019 at 04:00 p.m. before the jail authorities in terms of the satisfaction of the District Magistrate concerned, who is further directed to impose such conditions as are required to secure the presence of the petitioner in jail after the period of parole, is over and done with.

22.10.2019*neenu***(RAJIV NARAIN RAINA)
JUDGE**

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No