

CWP No.32270 of 2018

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

CWP No.32270 of 2018

Date of decision: 14.02.2019

Vishu Kumar

....Petitioner

Vs.

State of Haryana and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Randeep S Dhull, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order of the Superintendent District Jail, Faridabad dated 06.12.2018 (Annexure P-1) whereby the application of the petitioner for release on parole has been rejected. It has also been prayed that the respondents be directed to release the petitioner on parole.

The petitioner is undergoing rigorous imprisonment for 10 years in case FIR No.53 dated 17.02.2016, under Sections 304-B, 498-A, 406, 506, 34 IPC, Police Station Mujessar, District Faridabad after his conviction by the Additional Sessions Judge, Faridabad 13.12.2017.

The petitioner submitted an application dated 29.10.2018 to the Superintendent, District Jail, Faridabad for grant of parole to him as his son aged about 05 years had to undergo an urgent surgery. His request was not entertained. He filed CWP No.28867 of 2018 which was disposed of vide order dated

15.11.2018. The respondents were directed to consider his application and pass a

speaking order thereon within three days. In compliance therewith the impugned order has been passed denying parole to the petitioner.

In the impugned order, it has been mentioned that the petitioner was released on 03.08.2018 for three weeks parole for his wife's delivery in compliance with order of this Court in CWP No.15545 of 2018. Thereafter, he filed CWP No.21085 of 2018 for extension of parole. His parole was extended till 05.10.2018. He surrendered in jail on 05.10.2018.

The parole to the petitioner for treatment of his ailing son has been denied relying on Rule 4 (1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for short "the Rules"). As per this Rule a prisoner shall be entitled for parole only after he has completed one year of his imprisonment after conviction and earned his first annual good conduct remission under the Act. As the petitioner has not completed one year imprisonment after his conviction on 13.12.2017 he was not held entitled for parole.

In the written statement filed on behalf of the respondents, it has been stated that the medical conditions of the son of the petitioner has been got verified from SHO, Police Station Mujessar, Faridabad. As per medical certificate issued by Dr. Neeraj Aggarwal, MBBS, MD (Safdarganj Hospital), Sr. Consultant Specialist, Aggarwal Medical Centre, New Delhi, Sumit Kumar son of Vishnu (the petitioner) is suffering from Penile Hypospadias and requires urgent operation of Urethroplasty to correct difficulty in passage of urine to prevent acute retention. The medical certificate is also annexed as Annexure R-2. It has been stated that actual custody period of the petitioner after conviction is only 11 months, 1 day, which is short of the one year period required under Rule 4(1) of the Rules.

Clearly, the son of the petitioner, who is barely five years old requires

an urgent surgical intervention. As per Section 3(1) (a) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 a prisoner may be temporarily released if a member of the prisoners family has died or is seriously ill or the prisoner himself is seriously ill. The petitioner is entitled for release under this provision.

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 (Crl) 279

Accordingly this petition is allowed. The impugned order is quashed. The respondents are directed to release the petitioner on parole for a period of three weeks on his furnishing bail bonds/ surety to the satisfaction of the District Magistrate/ Competent Authority, Faridabad. . He shall surrender before the Jail authorities on expiry of three weeks of his release.

(HARINDER SINGH SIDHU)
JUDGE

February 14, 2019
Atul

Whether speaking/reasoned: Yes

Whether Reportable: Yes/No