

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

219

CRWP-10161-2021

Decided on : 01.11.2021

Manoj Yadav

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Prateek Rathee, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is a criminal writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus, seeking directions to release the petitioner on parole for a period of four weeks under Section 3 (1) (d) read with Section 3 (2) (b) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 [for short 'the Act of 1988'], to attend the medically scheduled child delivery of the wife of the petitioner/convict.

Learned counsel for the petitioner has submitted that the wife of the petitioner had moved an application before the Jail Superintendent to the effect that she was 08 months pregnant and there was nobody to take care of her and the expected date of delivery of the child is 18.11.2021. It has been further submitted that there is no other person to help the wife of the petitioner to deliver the child. Reference has been made to Rule 3 (1) (d) of the Act of 1988, which states that parole can be granted for medically scheduled delivery of the wife of the convict.

Learned State counsel, on the other hand, has submitted that the status report, as per which upon verification, it was learnt that the delivery of the child of Rekha, wife of the petitioner, is expected on 10.11.2021 and in this regard, statement of the doctor was also recorded. Learned State counsel has however, opposed the present petition on the ground that there are 4 other family members present other than the petitioner in his house. He has further opposed on the ground that the petitioner has undergone imprisonment for the heinous offence of murder and kidnapping for ransom.

Learned counsel for the petitioner in rebuttal has submitted that a perusal of para 6 of the reply would show that as far as his brother Mukesh is concerned, he is residing at his ancestral village and petitioner's sister Manju @ Monu is married and living in Noida. Thus, only the old parents of the petitioner are residing with the wife of the petitioner. It is thus argued that the presence of the petitioner is necessarily required for the purpose of delivery of the child. Learned counsel for the petitioner has further submitted that it has been repeatedly held by this Hon'ble Court that even in case the accused person has been sentenced to imprisonment for life and the conviction is under Section 302 IPC then also, the convicts therein have been allowed parole on account of the fact that wife of the convict was pregnant and was expected to deliver a child. Specific reference in this regard has been made to judgment dated 15.03.2016 passed in **CRWP No. 264 of 2016** titled as **Manoj Kumar Vs. State of Haryana and others,**

judgment dated 20.11.2012 passed in **CRWP No. 1893 of 2012** titled as **Sanjay Vs. State of Haryana and others**, judgment dated 06.07.2018 passed in **CWP No. 15545 of 2018** titled as **Vishnu Vs. State of Haryana and others** and also the judgment dated 19.02.2020 passed in **CRWP-1523-2020** titled as **Mannu @ Yash Vs. State of Haryana and others**.

This Court has heard the learned counsel for the parties. The fact that the wife of the petitioner is 8 months pregnant stands verified as is apparent from the reply filed by the State. With respect to the fact that there are 4 other persons in the family of the petitioner, it would be relevant to note that the brother as well as the sister of the petitioner are not residing alongwith wife of the petitioner. The parents of the petitioner are stated to be more than 60 years of age and thus, the presence of the petitioner would be necessary for the purpose of delivery of the child of the petitioner. With respect to the legal offence of murder and kidnapping, this Court in Manoj Kumar's case (*supra*) has held as under:-

“The petitioner stands convicted and sentenced to undergo life imprisonment vide judgment and order dated 14/16.10.2015 passed by learned Additional Sessions Judge, Yamuna Nagar in FIR No. 120 dated 18.10.2011 under Sections 302/120-B/34/201/176/202 IPC and Section 25 of the Arms Act registered at Police Station Sadar, Jagadhri. Aggrieved of the same, he has filed Criminal Appeal D-1590-DB of 2015 which stands admitted for final hearing.

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Upon notice, reply has been filed by the respondents wherein it is stated that the petitioner has undergone four months and twenty two days of his imprisonment after his conviction and also not earned his first annual good conduct remission. Therefore, he is ineligible to be granted the concession of parole. However, it is not denied that the wife of the petitioner is in the family way and the expected date of delivery is 27.3.2016.

xxx--xxx--xxx

Admittedly, the wife of the petitioner is pregnant and her expected date of delivery is 27.3.2016 and, therefore, there was no reason for the authorities to decline his prayer for release on parole.

In view of the above, the petition is allowed and the petitioner is ordered to be released on parole for a period of two weeks from the date of his actual release subject to his furnishing appropriate bonds to the satisfaction of the District Magistrate, Yamuna Nagar.”

Similarly, in Sanjay's case (*supra*), where the sentence awarded was for life imprisonment, a Coordinate Bench of this Court was pleased to release the petitioner on parole. The relevant portion of the said judgment is reproduced hereinbelow:

“Reply filed on behalf of respondent-State is taken on record. As per the same, the petitioner, who is suffering life imprisonment, has already availed three weeks agricultural parole, during this calender year and therefore, as per Section 3(1)(c) of the Act, he is not entitled for grant of any parole.

xxx—xxx--xxx

Consequently, the present petition is allowed. The petitioner is granted three weeks emergency parole from the date of his release, subject to the satisfaction of District Magistrate, Gurgaon, who shall take an adequate surety before

releasing him under the Rules notifying the period of parole. After expiry of the abovesaid parole period, the petitioner shall surrender before the Superintendent, District Jail, Gurgaon, i.e. respondent No. 2.

Copy of the order be given dasti under the signature of the Special Secretary of this Bench.”

In Vishnu's case (supra) which was a case registered under sections 304-B, 498-A, 406, 506 and 34 IPC, the accused/convict therein, was also released on parole.

Keeping in view the abovesaid facts and circumstances, moreso the fact that the presence of the petitioner would be necessary at the time of the delivery and for the subsequent care of the wife and the new born child of the petitioner and also keeping the law laid down in the abovesaid judgments, the present petition is allowed and the petitioner is released on bail for a period of 4 weeks from the date of his actual release subject to his furnishing appropriate bonds to the satisfaction of the District Magistrate, Hisar/competent authority. After the expiry of the abovesaid parole period, the petitioner shall surrender before the Superintendent, Central Jail-I, Hisar.

(VIKAS BAHL)
JUDGE

1st November, 2021

Mehak

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No