

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

225

CRWP-10559-2021

Date of Decision : November 22, 2021

JALALUDDIN

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Ms. Rosi, Advocate

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking parole of six weeks in case bearing FIR No. 216 dated 25.6.1997 under Section 307 IPC dated 25.6.1997 registered at Police Station Tauru, District Gurgaon (now Mewat (Nuh)) on account of marriage of his son and daughter which is stated to be fixed for 28.11.2021 and 29.11.2021.

On the last date of hearing, this Court had directed the concerned authorities to consider the application of the petitioner and decide the same in accordance with law within a period of one week.

A short reply by way of affidavit of Deputy Superintendent of Jail, District Jail, Gurugram on behalf of respondents No.1 to 3 has been filed before this court which is taken on record. Copy of the same has been supplied to learned counsel for the petitioner. She has stated that she has perused the same.

As per the affidavit filed by the aforesaid Officer, the petitioner is not entitled for the grant of parole under the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 in view of the fact that the petitioner has not undergone upto one year after conviction in view of

Section 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. The learned State counsel has submitted that in view of the aforesaid provisions, the petitioner is not entitled for grant of parole because one year has not been completed after conviction.

However, learned counsel for the petitioner has drawn attention of this Court to the orders passed by the District Magistrate, Nuh Annexure R-2 wherein it has been stated that so far as the marriage of the daughter and son of the petitioner is concerned, the same is fixed for 28.11.2021 and 29.11.2021 and it has been specifically recorded that there is no member in the convict's family who can take care of the marriage work. The learned counsel for the petitioner has further submitted that although the application for parole has been denied on the ground that the Superintendent of Prisons, Gurugram has not recommended the case of the petitioner for release on parole and on the another ground that on the report of Superintendent of Police, Nuh, the same should not be granted as he may abscond from parole. Learned counsel has submitted that the petitioner had been throughout on bail during the time of the trial and there is no history of jumping or violation of any condition of bail and, therefore, there was no material on the basis of which such a report has been made nor the same has been disclosed in the aforesaid order passed by the District Magistrate or recommendation by the Superintendent of Police. She submitted that such orders cannot be passed in a mechanical manner unless there is sufficient material on record to show and to disclose that due to these reasons there is any apprehension in the mind of the concerned Officer and that the petitioner may abscond in case granted parole. She further submitted that in the affidavit it has been stated that in view of the law laid down by this Court once there is a statutory provision the same cannot be violated and, therefore, the petitioner is not entitled for parole. She submitted that a perusal of the judgment passed by a Division Bench of this Court in **Jagdev Singh and another Vs. State of Punjab and others** CrI. Writ Petition No. 483 of 2012 decided on 16.3.2012 would show that the relevant para has not been fully reproduced in the reply which amounts to

misconduct on the part of the Officer, who has filed this affidavit. She submitted that the full paragraph of the judgment of a Division Bench is reproduced as under:-

“If the statutory rules impose a legal bar on consideration of the case of the petitioners for temporary release under the aforesaid Act, the same ought not to be overcome by a judicial order. However, it is always open to the court to consider the entitlement of the petitioners to bail for a limited period keeping in mind the peculiar facts and circumstances of the case. It is from the aforesaid standpoint that we have considered the cases of both the petitioners.”

She further submitted that the Hon'ble Division Bench of this Court had further observed that it is always open to the Court to consider the entitlement of the petitioner for parole for a limited period keeping in view the peculiar facts and circumstances of the present case. She submitted that so far as the present case is concerned, it has been already verified that the son and the daughter of the petitioner are to get married on 28.11.2021 and 29.11.2021 and it has also been stated in the order itself that there is no other person in the family to look after the arrangement of the marriage and further more there is no bad history of the petitioner while on bail during trial or that he has violated any condition of bail and there was no sufficient material available with the State to say that there is a likelihood that the petitioner may abscond. She submitted that rather the present case is also covered by a judgment of a Division Bench of this Court in Jagdev Singh's case (Supra) and, therefore, the petitioner may be granted parole only for a period of one week.

I have heard the learned counsels for the parties.

Although there is a provision under Section 4 (I) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 that

states that unless one year time is completed after the period of conviction, the petitioner is not entitled for parole but in view of the peculiar circumstances of this case, this Court can always exercise its powers under Article 226 of the Constitution of India when this Court is satisfied that it will be in the interest of justice to release the petitioner on parole for a limited period of time especially in view of the law laid down by a Division Bench of this Court in Jagdev Singh's case (Supra).

In view of the above, it is directed that the petitioner, namely, Jalaluddin shall be released on parole w.e.f. 26.11.2021 and the petitioner will return back to the District Jail, Gurugram on expiry of seven days i.e. on 2.12.2021.

The present writ petition is disposed of accordingly.

A copy of the order be communicated to Superintendent, District Jail, Gurugram.

November 22, 2021

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No