

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-11245-2021

Date of decision : 26.11.2021

Aashish

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Mayur Karkra, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a petition under Section 226 of the Constitution of India read with Section 3(1)(c) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 for directing the respondents to release the petitioner on parole for a period of at least three weeks, i.e. from 26.11.2021 to 16.12.2021 to attend the marriage of his nephew.

Learned counsel for the petitioner has submitted that the petitioner was found guilty in FIR no.40 dated 03.04.2015 registered under Sections 148, 149, 323, 325, 307 IPC at Police Station Mohana, District Sonipat and was convicted and sentenced to undergo rigorous imprisonment for a period of one year vide judgment and order dated 15.01.2020 and 22.01.2020 respectively, passed by the Additional Sessions Judge, Sonipat.

It has further been submitted that marriage of nephew (sister's son) of the

petitioner namely Sahil is fixed for 28.11.2021 and reference has been made to Marriage Card which has been annexed as Annexure P-1 with the present petition. It is further argued that the petitioner is maternal uncle (Mama) of the said Sahil.

Learned counsel for the petitioner has further submitted that earlier the petitioner had approached this Court by filing Criminal Writ Petition no.11014 of 2021 and this Court vide order dated 23.11.2021 disposed of the said petition with a direction to respondent no.3, i.e. The Superintendent, District Jail, Sonapat, Haryana, to consider the said petition to be an application of the petitioner for releasing him on parole and to pass a speaking order thereon.

In pursuance to the said order, it is submitted that respondent no.3 has passed the speaking order dated 24.11.2021 by which the parole of the petitioner has been rejected solely on relying upon Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007. It is further submitted that the said Rule is in violation of the Haryana Good Conduct (Temporary Release) Act, 1988. It is further submitted that a co-ordinate Bench of this Court in *Mahavir vs. State of Haryana and others*, reported as **2012(4) RCR (Criminal) 230** has held that Rules cannot override of the Act and thus, the emergency parole could not be rejected in a situation where the marriage of relative or the death of person has been fixed as the said aspects are not in the hand of the convict. Reliance has also been placed upon the judgment of co-ordinate Bench of this Court passed in *Gulab Singh vs. State of Haryana and others*, reported as **2019(2) RCR (Criminal) 1001**.

Learned State counsel has opposed the present petition and has

submitted that Rule 4(1) specifically provides that a person shall be entitled to apply for parole only after he has completed one year of imprisonment after conviction and also earned his first annual good conduct remission under the Act. It is submitted that in the present case, the said period of one year has not elapsed, thus, the impugned order rejecting the application is legal and valid. It is further submitted that marriage of relative could not be considered to be an emergency situation and the family should have consulted with each other before scheduling the marriage.

This Court has heard learned counsel for the parties and has perused the record.

A co-ordinate Bench of this Court in ***Mahavir's*** case (supra) has held as under:-

“...It is stated therein that since the petitioner has not completed one year of his imprisonment, he cannot be granted parole. The State has relied upon Rule 4(1) of Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter referred to as “the Rules”) and it reads as under:-

“Rule 4(1) - A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the Act.”

2. *Learned counsel for the petitioner has submitted that by invoking Rule 4(1) of the Rules, the petitioner cannot be denied parole. In support of this contention, reliance has been placed upon a judgment rendered in **Ranjit Singh v. State of Punjab and Others Recent Criminal Reports 388**. It was held therein that parole can be denied to the accused only on the grounds as specified in Section 6 of the Punjab Good Conduct*

Prisoners (Temporary Release) Act, 1962.

3. Thus, in view of the settled legal proposition that the Rules cannot override the provisions of the Act, the State was not justified in declining parole to the petitioner on the ground that he has not completed the requisite period of one year of his imprisonment. Even otherwise, the stand taken by the State is very harsh. The emergency parole is granted to the convict to attend various situations over which he has no control i.e. death or fixation of marriage of a relation. To say that the sister should postpone the marriage of her son or daughter, till the completion of one year of imprisonment by the convict so that she/he is able to attend the marriage, is demanding more than required. Rule 4 (1) of the Rules may be invoked in case of parole which is to be granted for attending agricultural pursuits or house repairs which are recurring periodical feature in the life of human being and over which the convict has control or can plan in advance. Hence, stand of the State that the petitioner has not completed one year of his imprisonment is untenable.”

A perusal of the above judgment would show that in the said case the petitioner therein had committed offences under Sections 363, 366, 376, 506 IPC and the same objection had been taken by the State to the effect that as per Rule 4(1) of the Rules, the petitioner therein had not completed one year of imprisonment and co-ordinate Bench of this Court after considering the judgment in **Ranjit Singh's** case had observed that the Rules cannot override the provisions of the Act and the parole could not be declined by the State on the ground that the convict has not completed requisite one year of his imprisonment. It was observed that in cases such as

the convict/applicant and it would not be possible for the convict / applicant to ask his sister to postpone the marriage of her son or daughter till the completion of one year imprisonment of convict, so he can attend the marriage. It was further observed that where in case parole is sought for agricultural pursuits or house repairs which are recurring periodical feature and on which the convict has control that can be governed by the said Rule and not one which is not in the control of the accused person. The said judgment applies on full force to the case of the present petitioner. In fact in the said case, the convict had committed a grievous offence under Section 376 IPC and further the said judgment in ***Mahavir's*** case (supra) has been relied upon by a co-ordinate Bench of this Court in ***Gulab Singh's*** case (supra) and parole was granted on account of death of real brother of the petitioner therein although the same was in violation of Rule 4(1) of the Rules.

The argument raised by learned counsel for the State to the effect that the present marriage could have also been planned would not make this Court take a contrary view to the view taken in the above said two judgments for the reason that the marriage of relative, i.e. sister's son would primarily depend upon the convenience of the sister's son and his parents and of the would be bride and thus to say that it should depend upon the availability of the present petitioner who is the matrimonial uncle to attend the said wedding would not be correct. It is not in dispute that the marriage of said nephew (sister's son) is scheduled for 28.11.2021 and there are certain functions even on 27.11.2021. It has been held by Division Bench of Madhya Pradesh High Court in CRA-310-2013 titled as “***Deepak Taneja vs. State of M.P.***” decided on 02.11.2016 that marriage of niece of the

convict was a good ground to grant parole / interim suspension of sentence.

Keeping in view the above said facts and circumstances, the present petition is allowed and the impugned order dated 24.11.2021 is set aside and the respondents are directed to release the petitioner on parole from 27.11.2021 subject to his furnishing bail / surety to the satisfaction of the District Magistrate/ Duty Magistrate / Illaqa Magistrate, Jhajjar. The petitioner would surrender before the jail gate of District Prison, Jhajjar on 04.12.2021 at 4.00 PM.

(VIKAS BAHL)
JUDGE

November 26, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No