

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

**CRWP-943-2022 (O&M)
Date of Decision:10.02.2022**

Umed

... Petitioner

Versus

State of Haryana & others

... Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE LALIT BATRA.**

Present:- Mr. R.S. Dhull, Advocate for the petitioner.

Mr. Deepak Bhardwaj, DAG, Haryana.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

With the consent of the counsel for the parties, the instant petition is taken up for final disposal today itself.

Petitioner stands convicted vide judgment dated 02.03.2021 passed by the learned Additional Sessions Judge, Hisar and has been sentenced to undergo RI for life in case FIR No.75, dated 14.03.2017, under Sections 147/148/149/323/325/506/302/307 IPC and Sections 25/27 of the Arms Act, registered at Police Station Sadar Hansi, District Hisar.

Instant petition has been filed assailing the order dated 24.01.2022 (Annexure P-1) passed by the Superintendent of Prison, Central Prison-I, Hisar in terms of which an application preferred by the brother-in-

law of the petitioner seeking concession of parole to the petitioner to attend the marriage of his niece and nephew has been declined.

Counsel for the parties have been heard at length.

It has gone uncontroverted that the application that had been preferred by the brother-in-law of the petitioner was for concession of parole to the petitioner on the ground that the marriage of his niece and nephew is slated from 17.02.2022 onwards.

Perusal of the impugned order dated 24.01.2022 (Annexure P-1) declining the prayer for parole would show that the same has been declined on the solitary ground that the petitioner has not completed one year of imprisonment after conviction and as such, the claim is barred in terms of Rule 4 (1) of the Haryana Good Conduct (Temporary Release) Rules, 2007.

Learned State counsel otherwise submits that it stands verified that the marriage of the niece as also nephew of the petitioner has been fixed for 18/19.02.2022.

We are of the considered view that the impugned order dated 24.01.2022 at Annexure P-1 passed by the Superintendent of Prison, Central Prison-I, Hisar, cannot sustain.

Section 3 of the Good Conduct Prisoners (Temporary Release) Act, 1988 reads in the following terms:

“3. Temporary release of prisoners on certain grounds-- (1) the State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any

prisoner, if the State Government is satisfied that-

(a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(d) it is desirable to do so for any other sufficient cause

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed-

(a) Where the prisoner is to be released on the grounds specified in clause (a) of sub-section (1), three weeks;

(b) Where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks:

Provided that the temporary release under clause © can be availed more than one during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all

or any other ground specified there under.”

In terms of Section 3, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. Temporary release under Section 3 of the Act can also be considered on the ground of marriage of the prisoner himself or close relative under Section 3(b). Temporary release may also be considered '**for any other sufficient cause**' under Section 3(d).

The restriction of one year imprisonment after conviction to be eligible for temporary release as has been imposed by way of the rules cannot supersede the substantive provisions of the Act i.e. the Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988.

Precisely, this very issue came up for consideration before a Division Bench of this Court in ***Deepak Vs. State of Haryana & another, 2014 (4) RCR (Criminal) 531*** and it was held as follows:

“5. We have given our thoughtful consideration to the matter. It may be noticed that in terms of Section 3(1)(a) of the Act, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was published in the Haryana Government Gazette (Extra) Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the

Rules cannot supersede substantive provision of the Act.”

Similar view has also been taken by a Division Bench of this Court in a recent judgment dated 05.09.2014 rendered in ***CRWP No.1293 of 2014 titled as Rakesh Vs. State of Haryana & others.***

Following the dictum laid down by this Court in the judgment noticed hereinabove, the impugned order dated 24.01.2022 at Annexure P-1, is set aside.

Directions are issued to the Superintendent of Prison, Central Prison-I, Hisar/competent authorities to release the petitioner on parole for a period of one week commencing w.e.f. 14.02.2022.

Petitioner would report back to the Jail Authorities on 21.02.2022 at 11 A.M.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

10.02.2022
harjeet

(LALIT BATRA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |