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

CRWP-2457-2022

Date of decision : 24.03.2022

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. Munish Sharma, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a Criminal Writ Petition filed under Article 226 of the Constitution of India read with Section 3(1)(c) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 (hereinafter to be referred as “the Act”) for issuance of a writ directing the respondents to release the petitioner on parole for a period of three weeks i.e. from 21.03.2022 to 12.04.2021 to attend the marriage of his real younger brother.

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 is further submitted that marriage of real brother of the petitioner namely Ankit has been fixed with Ravina for 24.03.2022 as is apparent from Marriage Card (Annexure P-1). It is contended that reception is on 25.03.2022. It is further contended that the petitioner is the elder son of the family and father of the petitioner is an old person of 59 years of age and is incapable of making all the arrangements for the said marriage. It is argued that the petitioner had earlier also filed a petition bearing No.CRWP-11245-2021 with a prayer for grant of parole for a period of three weeks to attend the marriage of his nephew which was granted by this Court vide order dated 26.11.2021 after considering the objections raised by learned counsel for the State who had relied upon Rule 4(1) of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter to be referred as “the Rules”). It is further contended that after having been granted parole, the petitioner had not misused the said concession and had surrendered within the stipulated time and the said fact also furthers the case of the petitioner.

On the other hand, learned State Counsel has opposed the present petition for grant of parole and submitted that as per Rule 4(1) of the Rules, the petitioner is entitled to parole only after he has completed one year of imprisonment after conviction and after earning his first annual good conduct remission under the Act. It is submitted that the petitioner has not completed one year of imprisonment after conviction and is thus, not entitled to parole. The fact with respect to marriage of brother of the

petitioner stands verified.

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

The marriage of real younger brother of the petitioner is fixed for 24.03.2022 and reception is for 25.03.2022. The petitioner is stated to be the eldest son and his presence would be necessary for the marriage of his real younger brother as he is the elder son in the family and father of the petitioner is stated to be an old aged person, who is incapable of making all the arrangements for the marriage. The petitioner had earlier filed CRWP-11245-2021 and this Court vide order dated 26.11.2021, after considering the objection of the State Counsel with respect to the Rule 4(1) had allowed the petition. Relevant portion of the said judgment is reproduced hereinbelow:-

*“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 coordinate 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 death or fixation of marriage of a relative, the same is not within the*

*hand of 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."*

A perusal of the above judgment would show that after considering the various judgments on the point and also after considering the rigors of Rule 4(1), it was held that the petitioner was granted parole/interim suspension of sentence and was permitted to attend the wedding of his nephew. In the earlier case, the petitioner had surrendered on time after the grant of said parole/interim suspension of sentence, thus, the said point is also in favour of the petitioner.

Keeping in view the abovesaid facts and circumstances, the present Criminal Writ Petition is allowed and the petitioner is directed to be released on parole subject to his furnishing bail bonds/surety bonds to the satisfaction of the concerned District Magistrate/Duty Magistrate/Illaqa Magistrate, Jhajjar.

The petitioner is directed to surrender before the Jail Gate of District Prison, Jhajjar on 08.04.2022 at 4 pm.

24.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**