

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

**Criminal Writ Petition No. 2669 of 2022
Date of Decision: 28.03.2022**

Sonu Sharma

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Harpal Preet Singh Chopra, Advocate for the petitioner.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner faced trial for commission of offence(s), incorporated in FIR No. 139 of 17.04.2002, which was registered at Police Station Shahabad, District Kurukshetra. The offences constituted therein are offences under Sections 406/420 of the IPC.

2. After conclusion of trial, by the learned trial Magistrate concerned, upon the relevant charges, drawn against the petitioner, he became convicted, through the making of a verdict of conviction, and, also the consequent therewith substantive sentence of imprisonment, extending upto two years, became imposed upon him. The afore made verdict of conviction, and, also the consequent therewith sentence (supra), as, became imposed upon the convict, by the learned trial Magistrate concerned, became affirmed by this Court.

3. The petitioner, who is consequently suffering imprisonment in the jail concerned, proceeded to, during the pendency of his incarceration,

moved an application, embodied in Annexure P-1, before the authorities

concerned. Through the apposite application, he claimed the relief of his being granted parole. However, his application became rejected by the authorities concerned, through their making Annexure P-4.

4. A reading of the afore Annexure P-4 reveals, that the authorities concerned, while declining the espoused parole to the convict, had made dependence upon Rule 4 of the relevant Rules, as, framed under The Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (for short “the 2007 Rules”). The relevant Rule 4 is extracted hereafter:-

“ 4. Eligibility [Section 10(2) (d)] -

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

(2) A prisoner, who has been convicted and sentenced for imprisonment less than four years, shall not be entitled for parole. ”

5. A combined reading of both sub-Rules (1) & (2) of the afore Rule 4, make its apparent that the prisoner(s) concerned, would become entitled to apply, for parole, only after his completing one year's imprisonment, rather post the verdict of conviction, becoming made upon him, and, also the afore entitlement, is made subject to a further disabling rider / proviso, that if the sentence of imprisonment imposed upon the convict, extends to a period of less than four years, thereupon, obviously the mandate of the provisions carried in sub-Rule (1) rather becoming effaced. Though, prima facie, there is apparently, given the statement made at the Bar, by the learned counsel(s) appearing for the contesting litigants, rather no spendings of one year, hence in prison, by the convict, rather post his

conviction. Contrarily, it is stated at the Bar, that post verdict of conviction, he has spent only eleven (11) months in prison, from the total substantive sentence of imprisonment of two years six months, as, became imposed upon him. Consequently, in view of the afore made statement at the Bar, the mandate carried in sub-Rule (1) of Rule 4 (supra), is not attracted qua the petitioner.

6. Be that as it may, even the thereafter, sub-Rule (2) of Rule 4 (supra) casts a condition, which rather is more exacting than the condition carried in sub-Rule (1), inasmuch as, when in sequel to the verdict of conviction, a substantive sentence of imprisonment, carrying a period rather less than four years, becomes imposed upon the convict, thereupon the convict becoming dis-entitled to apply for the claimed for parole.

7. Since, the petitioner, at this stage, or post his conviction, hence has spent eleven (11) months in custody, thereupon, even if during the investigations, and, during the pendency of the trial, entered upon against him, by the learned Magistrate concerned, he has also spent about seven months, therefore, the total(s) thereof, though becomes one year six months, rather on the relevant date, but the afore pre conviction spendings in incarceration are to be excluded. The reason being that, the afore period of spendings in police incarceration or judicial incarceration, by the convict, is not to be borne in mind, as the relevant “coinages” existing in both sub-clauses of Rule 4, rather mandate that the computation of the relevant periods spent in prison, by the convict, is to be computed, rather post the verdict of conviction, as, made upon him, by the learned trial Court(s)

concerned. Therefore, reiteratedly the period spent either in police incarceration, or, in judicial incarceration, by the accused-convict during the pendency of investigation, or, during the pendency of the trial, entered against him, by the learned trial Judge concerned, is to be excluded for the purpose of determining the applicability of the mandate(s) comprised, respectively in sub-Rules (1) & (2) of Rule 4 (supra).

8. However, though this Court makes the afore interpretation upon both the sub-clauses of Rule 4, and, in sequel thereto, prima facie, the petitioner-convict is not entitled to avail the benefits of parole. Nonetheless, the mandate of Clause (d) of sub-Section (1) of Section 3 of The Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which becomes extracted hereinafter, rather is deemed fit, and, just to be read into, and, applied qua the petitioner's claim for his being accorded the benefit of parole.

“ 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.”

9. The reason for making the afore conclusion, spurs from the factum that the impugned order of 28.02.2022 (Annexure P-4), makes its emphatically clear, that he did not indulge in any ill-conduct, during the period of his imprisonment. Moreover, with Rule 3 of the appositely formulated Rules, preceding Rule 4 (supra), and, also bearing in mind the above extracted apposite mandate carried in Section 3 of the apposite Act, provisions whereof are obviously carried in an assented to Legislation passed by the State Legislative Assembly concerned, and, hence override(s) and overcome(s) any rule to the contrary, as occurring in the appositely drawn Rules, besides also overcomes the deficit, if any, and, also supplants all disabling effects, if any, of the relevant Rule(s) (supra). Therefore, the mandate of sub-Section 1 (d) of Section 3 of the apposite Act, is deemed to be added, as a proviso to Rule 4 (supra), and, also the very existence of Section 3 (supra) in Statute (supra), rather does reflect a clear intention of the Legislature, to relieve the harshness, and, the exacting rigour of Rule 4 (supra)..

10. Consequently, and, reiteratedly Clause (d) of sub-Section (1) of Section 3 of the apposite Act, is to be read into Rule 4 (supra), and, imperatively as a proviso thereto.

11. In sequel, even if the competent authority, did not affirmatively bear in mind the ailment besetting the wife of the petitioner,

yet if, upon, any sufficient cause other than the ailment, besetting the petitioner, he moves a fresh application for his being released on parole, thereupon, the authorities concerned, may consider the same, and, shall within three weeks thereafter, hence make a speaking order, upon the application concerned.

12. Disposed of.

March 28, 2022

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>