

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

CRWP No.342 of 2023 (O&M)
Date of decision : March 29, 2023

Ravi Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr.Nandan Jindal, Advocate for petitioner.

Mr.Dhruv Dayal, Addl.AG, Punjab.

HARINDER SINGH SIDHU, J.

CRM-W-393-2023 is allowed. The documents annexed with the application are taken on record.

Ravi Kumar – petitioner has been convicted and sentenced to undergo life imprisonment vide judgment and order dated 22.09.2021 passed by the Ld. Additional Sessions Judge, Hoshiarpur in case FIR No.64 dated 22.05.2016 under Section 302, etc., Police Station Sadar Hoshiarpur. Against his conviction he has preferred an appeal (CRA-D-617-2021) which is pending.

In this petition, he has assailed the order dated 04.01.2023 (Annexure P-4) passed by Respondent No.4 – the Superintendent, Central Jail, Ferozepur, whereby, his request for grant of Emergency Parole has been declined,, while observing as under:-

“... Considering your representation dated 06.12.2022 received in this office on 06.12.2022 without signature/thumb

impression, you are informed that you have committed jail offence on 17.09.2022 and therefore you are not eligible for consideration under Punjab Good Conduct (Temporary Release) Act, 1962 and your parole/emergency parole case will be considered after one year from the date of committal of offence i.e. 17.09.2023 as per instruction issued vide letter No.10718/48 dated 19.09.2002 and after release on bail in pending cases and due to above said reason, undersigned is not the competent authority to consider grant of any kind of parole/emergency parole under any circumstances whatsoever.”

Mr. Nandan Jindal, Ld. counsel for the petitioner has submitted that the mother of the petitioner is suffering from heart ailment. Earlier, she was getting treatment from the Department of Cardiology, Government Medical College, Amritsar. Referring to the medical record Annexure P-5, it is stated that now the mother of the petitioner, namely Smt.Ninder Kaur @ Narinder Kaur is undergoing treatment from Department of Cardiology, PGIMER, Chandigarh. She was admitted there on 28.02.2023. ECG and Echo tests were conducted and she has been advised angioplasty with stent (PCI - Percutaneous Coronary Intervention).

Mr.Jindal further submits that the petitioner and his brother, both are undergoing the life imprisonment. There is no male member in the family to take care of their mother and for that reason the angioplasty is being delayed. So far as the alleged involvement of the petitioner in jail offence is concerned, it is argued that as per the Punjab Good Conduct (Temporary Release) Act, 1962 (for short 'the Act') it cannot be a reason to

deny emergency parole to the petitioner for treatment of his seriously ill mother.

Reply has been filed by Deputy Superintendent of Police, Sub-Division City, District Hoshiarpur stating that the Police visited the house of the petitioner where Harwinder Kaur wife of the petitioner was present. She stated that her mother-in-law has been suffering from illness for a long and she is under treatment. That day, she was not present in the house and had gone to take medicines from some Hospital. Thereafter, the Police of Police Station Sadar, Hoshiarpur also recorded the statement of Kulwant Kaur, Municipal Councillor of Ward No.19, Mohalla Tak Chatri, Balmik Colony, Tarn Taran, who stated that mother of the petitioner is living in their Mohalla and her husband had died. She often remains ill. Harwinder Kaur and Kiran are her daughters-in-law. Narinder Kaur is getting treatment from Amritsar Hospital. Further, statement of Pawan Tulli, Nambardar was also recorded, who also stated that Narinder Kaur, mother of the petitioner has been suffering from illness and she is taking treatment from Amritsar. Along with reply, statements of all the above three persons have been annexed as Annexure R-2/T, R-3/T and R-4/T, respectively.

So far as the objection of the respondents that since the petitioner is involved in jail offence, therefore, as per instructions dated 19.09.2002, his case for parole can be considered only after one year of such an incident, it is well settled that any guidelines or instructions cannot override the provisions of a Statute.

A somewhat similar question was considered by a Division Bench of this Court in **Gurpreet Singh v. State of Punjab** 2012 (3)

R.C.R.(Criminal) 504. In that case the petitioner had sought emergency parole as his mother was unwell and had to undergo surgery. Parole was denied on the ground that as per sub-rule (2) of Rule 3 of the Punjab Good Conduct Prisoners (Temporary Release) Rules 1963 a prisoner could not be released unless he has after his conviction maintained good conduct for at least four months.

This Court allowed parole holding as under:

7. The provisions of Section 3(1)(a) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 ('Act' for short) provides for temporary release of prisoners on certain grounds.

Section 3(1)(a) of the Act reads as under :-

3. Temporary release of prisoners on certain grounds :-

(1) The State Government may, in consultation with the District Magistrate 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"

8. The above provisions provides for temporary release of prisoners for a period specified in sub-section (2) if the State Government is satisfied that a member of the prisoner's family had died or is seriously ill. In terms of sub-section (2) in case a prisoner is to be released on the ground specified in Clause (a) of Section 3 (1), the period of release is not to exceed two weeks.

9. The mother of the petitioner (prisoner) has been advised an operation on account of her cardiac blockage. The petitioner applied for grant of emergency parole vide application dated 27.09.2011 (Annexure P-1). The outdoor patient card (Annexure P-2) of his mother was also enclosed for perusal. However, temporary release on parole has been declined to the petitioner in view of the proviso to sub-rule (2) of rule 3 of the Rules. Rule 3 of the Rules provides the procedure for temporary release and it envisages the procedure to be followed and the application form to be filled in by a prisoner for temporary release as also the steps to be taken by

Superintendent of Jail for forwarding the application. The proviso to sub-rule (2) of rule 3 of the Rules was inserted by a notification dated 23.09.2003 and it envisages that no such application shall be processed by the Superintendent of Jail, unless the prisoner has maintained good conduct after his conviction at least for four months in jail. The provision of rule 3 of the Rules are procedural provisions, which are directory and not mandatory. The provisions of Section 3(1)(a) of the Act, however, are substantive provisions which would prevail over the procedural provisions of the Rules. The petitioner, as already noticed, has been convicted and sentenced by the learned Sessions Judge, Roopnagar vide order dated 08/10.09.2011. Against the order of his conviction and sentence, the petitioner has filed Criminal Appeal No.908-DB of 2010. A perusal of the order dated 08.09.2011 passed by the learned Sessions Judge, Roopnagar shows that the petitioner-Gurpreet Singh was in custody during trial while sentencing him to imprisonment vide order dated 10.09.2011, the sentences that were imposed were ordered to run concurrently.

10. The object of Section 3 of the Act is to provide for temporary release to prisoners in case of certain eventualities which are that (a) a member of the prisoner's family had died or is seriously ill; or (b) the marriage of the prisoner'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 any other land cultivated by him and no friend of the prisoner or member of the prisoner's family is prepared to help him in this behalf in his absence; (d) it is desirable for any other sufficient cause. Therefore, an illness of a family member of a prisoner would warrant temporary release of the prisoner so as to enable the prisoner to provide for his treatment.

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12. We are even otherwise of the view that the proviso added to sub-rule (2) of rule 3 of the Rules would not supersede the substantive provisions of the Act specially in a case where the release of the petitioner is sought immediately so as to enable him to arrange for the treatment for his mother. In case of death or serious illness in the family of the prisoner would warrant immediate release and a waiting period of four months after conviction would in some cases, as in the present case, defeat the legislative intent and mandate, which is not to be circumvented by procedural rules.”

It was held that a proviso added to a Rule framed under the Act could not supersede the substantive provisions of the Act which contained

no such prohibition. What holds good for a Rule would equally apply to instructions which are de hors the Act.

As per Section 3(1)(aa) read with Section 3(2)(b) of the Act, a prisoner is entitled to temporary release for a period of eight weeks where father or mother is seriously ill.

A cumulative reading of the documents of medical history, which includes the Outdoor Ticket dated 18.11.2022 (Annexure P-1) issued by the Department of Cardiology, OPD, Government Medical College and Hospital, Amritsar and the Medical Treatment history (Annexure P-5) of Department of Cardiology, PGIMER goes to show that the mother of the petitioner is suffering from heart ailment. The PGIMER treatment history further fortifies that she is advised angioplasty with stent (PCI - Percutaneous Coronary Intervention), which necessitates proper care and treatment both in the hospital and on discharge.

Accordingly, the petition is allowed. The impugned order dated 04.01.2023 (Annexure P-4) is quashed. The respondents are directed to release the petitioner on parole for a period of **four weeks** subject to his furnishing bond/ surety to the satisfaction of the District Magistrate/ Competent Authority. The petitioner shall surrender before the Jail authorities on the expiry of the parole period.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 29, 2023

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No