

118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-3890-2023

Date of Decision: 21.04.2023

Gagandeep Singh @ Peeta

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Subhash Kumar, Advocate
for the petitioner.

DEEPAK MANCHANDA J. (ORAL)

This petition has been filed under Article 226 of the Constitution of India read with Section 482 of Cr.P.C for issuance of directions to the respondents for releasing the petitioner for 15 days on emergency parole under Section 3(1)(d) of the Punjab Good Conduct Prisoners(Temporary Release) Act 1988 to enable him to meet his mother, who is at her last stage and is in serious condition, suffering from diabetic nephropathy/CKD/S. Anemia.

This petition had been filed on 20.04.2003 seeking the aforesaid relief. But during the arguments learned counsel for the petitioner on instructions from his client submits that the mother of the petitioner has unfortunately expired yesterday and he prays that the petitioner be allowed to attend the funeral ceremony as well as the mourning rituals of his mother. Learned counsel submits that the petitioner has filed CRA-S-1174-2022, which stands admitted, whereby the petitioner had been convicted and sentenced under Section 379-B of IPC and to undergo RI for 5 years and to pay a fine of Rs.10,000/- and further convicted under Section 451 of IPC and to undergo RI for 3 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further RI for 1 month and application for suspension of sentence

Learned counsel further submits that the petitioner has already undergone in custody of 1 year and 7 months out of 5 years and has never availed any parole or furlough since the date of his arrest till he is confined in jail and is a first time offender.

Notice of motion.

On the asking of the Court, Mr. P.S. Grewal, DAG, Punjab, who is present in the Court, accepted notice and was directed to verify the factum of the death of mother of the petitioner. After receiving instructions from SI Satwinder Singh, learned State counsel submits that the mother of the petitioner has expired on 20.04.2023 at 9.00 PM and has produced a copy of the application dated 20.04.2023 vide which permission for keeping the dead body in the mortuary was granted to the family members of the petitioner. He further submits that the factum of death of the mother of the petitioner has been verified from the Numberdar of the village Dehriwal Block Tanda, District Hoshiarpur, who has also admitted the same and has placed a photocopy of the verification conducted by police official of Police Station Tanda dated 21.04.2023. Learned State counsel has not disputed the fact that the petitioner has never availed any parole or furlough since the date of his arrest till the date he is confined in jail and is a first time offender.

Keeping in view the aforesaid circumstances and as per the provisions of Section 3 of The Punjab Good Conduct Prisoners(Temporary Release) Act, 1962 (for short the 'Act'), which provides for temporary release of prisoners on certain grounds and the same 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-

³[(a) a member of the prisoner's family has died; or

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother- in-law of the prisoner 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 a member of the prisoner's family is prepared to help him in this behalf in his absence; or

[(cc) a lady prisoner is pregnant and is likely to deliver a child; or

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

[Explanation.-The expression "sufficient cause" includes-

(1) serious damage to life or property of the member of the family caused by any natural calamity; or

(2) critical condition of any member of the family on account of accident; or

(3) delivery of child by the wife of the prisoner.]

[(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 ground specified in clause (a) of sub-section (1), fifteen days;

(b) where the prisoner is to be released on the ground specified in clause (aa) or clause (b) or clause (c) or clause (d) of sub-section (1), [eight weeks]; and

(c) where the prisoner is to be released on the ground specified in clause (cc) of sub-section (1), one hundred and twenty days (sixty days prior to the date of delivery of child and sixty days after the date of delivery of child].

[(2-A) The total period of temporary release of the prisoner, excluding the release availed of,-

(i) on the death of a family member of the prisoner; or

(ii) by a female prisoner on account of delivery of child, as the case may be,

shall not exceed sixteen weeks, during a calendar year and shall be availed of on quarterly basis:

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019, as a onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is on temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so.]

1[Provided further that during disasters under the Disaster Management Act, 2005, or epidemics under the Epidemic Diseases Act, 1897, the State Government may, by a special notification published in the Official Gazette, allow temporary release beyond the maximum period of sixteen weeks during a calendar year, and may also waive the condition of temporary release being availed of on quarterly basis.]

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

(4) The State Government may by notification authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein.”

I have heard learned counsel for the parties.

Even Section 3(1) of the Act, which deals with the temporary release of the prisoners on certain grounds, a prisoner can be released on account of death of family member and Section 3(2) of the Act deals with the period for which a prisoner can be released but same should not exceed beyond 15 days. Section 3(2-A) of the Act talks about the total period of temporary release of a prisoner excluding the release availed. Even as per the mandate of Section 3 of the Act, there is no bar and Section itself entitles a prisoner for temporary release on one of the grounds of death of a family member. Though, it is also mentioned that as per Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963 (for short 'the Rules'), Rule 3, which is related to procedure for temporary release under Section 3 of the Act where it is mentioned that a prisoner desirous of seeking temporary release under Sections 3 or 4 of the Act shall make an application in Form A-1 or Form A-2 to the Superintendent of Jail. Such an application may also be made by an adult member of the prisoners family and as per Rule 3(2) the Superintendent of Jail, shall forward the application along with his report to the District Magistrate, who after consulting the Superintendent of Police of his District shall forward the case with his recommendations to the Inspector General, who will then record his view on the case whether the prisoner is to be released or not and submit the same to the releasing authority for orders. Thereafter, the District Magistrate before making any recommendations shall verify the facts and grounds on which release has been requested and shall also give his opinion whether he is released on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the security of the State or prejudicial to the maintenance of public order. Provided that no such application shall be processed by the Superintendent of Jail, unless the

prisoners had maintained good conduct after his conduct after four months of jail. Further, Sub-rule(3) of the Rules entitles a prisoner for release under the Act after making such an enquiry as it may deem fit, after achieving satisfaction of the releasing authority, who can release the prisoner by following procedure.

At this stage, though the petitioner has filed this petition for seeking emergency parole on the ground that his mother is not keeping well but after filing of the present petition, she unfortunately expired on 20.04.2023 itself, i.e. the date of filing of the present petition. Though, the petitioner has not followed the due procedure by moving an appropriate application as per Rule 3 of The Punjab Good Conduct Prisoners (Temporary Release) Rules, 1963, Rule 3 of the said Rules, but Article 21 of the Constitution of India removes any such restriction, if the facts and circumstances justifies such parole, petitioner cannot be deprived of attending funeral of his mother, where neither he has availed any parole or furlough during his custody and nor the State counsel has pointed out any adverse observation by the Jail Authorities. Further, the son has preferential and legal rights of performing last rites of his mother and the same should not be denied. Even otherwise, there is no bar in the Act itself rather, Section 3(1) of the Act permits the temporary release on this count also.

In view of the facts and circumstances of the present case, the petition is allowed and a writ of mandamus is issued directing the respondents to release the petitioner on parole for a period of 10 days w.e.f. 22.04.2023 on furnishing bail bonds by the petitioner to the satisfaction of competent Court/Ilaqa Magistrate and on expiry of said period of 10 days from the date of his release, the petitioner shall surrender before the concerned jail authorities. However, the parole shall be on the following terms and conditions.

1. The petitioner shall furnish a telephone number to the Jail Superintendent on which he can be contacted, if required. After his release he shall also inform his telephone number of the SHO of the police station concerned.
2. Immediately, upon the expiry of period of parole, the petitioner shall surrender himself before the Jail Superintendent.
3. The period of parole shall be counted from the day when the petitioner is released from jail.
4. If the petitioner commits any offence during the period of his temporary release on parole, the officer in-charge of the police station shall forthwith, and in any case not later than 24 hours of his coming to know of the commission of offence, send a report thereof to the Superintendent of Jail, and to the Superintendent of Police of the District. On receipt of a report under sub-rule (1) the Superintendent of Jail shall forthwith send the same to the Inspector General for being forwarded to the releasing authority, who may thereafter, cancel the release warrants.

21.04.2023
Sapna

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No