

2023:PHHC:146573

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

233

CRWP 10978-2023

Date of Decision:17.11.2023

Dushyant @ Ramu

...Petitioner

Vs.

State of Haryana

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. H.S. Jaswal, Advocate, for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India with a prayer to quash the impugned order dated 02.11.2023 (Annexure P-2) passed by respondent No. 3, whereby, the claim of the petitioner for grant of parole for solemnization of his marriage was rejected, which is scheduled to be held on 20/21.11.2023.

2. A short reply by way of an affidavit of the Superintendent Central Jail, Ambala, has been filed on behalf of the respondents No. 1 to 3 and the same is taken on record.

3. Learned counsel for the petitioner contends that the petitioner was convicted under Sections 395, 396 and 397 IPC and

sentenced to undergo rigorous imprisonment for life. He also filed an appeal, i.e., Criminal Appeal No. 590-DB of 2009 before this Court, however, the same was also ordered to be dismissed by this Court vide judgment dated 01.07.2014. Earlier the petitioner had approached this Court by way of Criminal Writ Petition No. 3524 of 2023 and vide order dated 02.06.2023, this Court granted 10 weeks' parole on 11.08.2023. Thus, the petitioner availed parole for a period of 65 days. Learned counsel further contends that the date of marriage of the petitioner was finalized on 27.10.2023 and on 01.11.2023, the parents of the petitioner moved an application alongwith marriage card for grant of 04 weeks' parole, to the respondent No. 3 for solemnizing the marriage of the petitioner. The marriage of the petitioner is scheduled to be held on 20.11.2023/21.11.2023. However, vide order dated 02.11.2023 (Annexure P-2), the prayer of the petitioner was ordered to be rejected by respondent No. 3. Learned counsel further contends that the petitioner has already availed 65 days of parole, i.e., w.e.f., 06.06.2023 to 11.08.2023, in compliance of the order dated 02.06.2023 passed by this Court in Criminal Writ Petition No. 3524 of 2023. However, as per the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act 2022 (hereinafter referred to as 'the Act'), the petitioner is entitled to avail regular parole for 70 days and that too in two parts. He further contends that the petitioner has availed parole for a period

of 65 days and even 5 days are left to be availed in the second part. Consequently, the petitioner is entitled to be considered and released on parole for at least 05 days. Learned counsel has also placed reliance on the marriage card of the petitioner in support of his submissions. Learned counsel further contends that earlier also, the petitioner has availed parole and furlough and always surrendered at Jail, without any complaint. Thus, the petitioner had maintained always good conduct and is entitled to be released on bail.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner is a “hard core convicted prisoner” and is not entitled to grant of the relief claimed in the instant petition. It has been stated that the petitioner does not have 04 weeks' parole in spare in this Calender year nor he is entitled to any emergency parole or furlough as per the Act. Consequently, the prayer was considered by the competent authority and the petition has been rightly rejected. Section 3 of the Act provides for temporary release of convicted prisoners on parole and the same has been reproduced below:-

3. Temporary release of convicted prisoner on regular parole on certain conditions-

(1) The Competent Authority shall grant regular parole to a convicted prisoner subject to such conditions and procedure as specified under Sections 11 and 12.

*(2) The period for which a convicted prisoner may be released under this Section shall be ten weeks in a calendar year cumulatively and **the convicted prisoner may avail it in two parts;***

Provided that in case of delivery of a female convicted prisoner, the period of release under this section shall be six months, beginning from one month prior to the expected date of delivery as certified by the Medical Officer of the jail.

(3) Convicted prisoner who has not completed one year of sentence after conviction shall not be eligible for regular parole.

Provided that the restriction shall not be imposed on old aged convicted prisoner of seventy years or above in case of male and sixty five years or above in case of female.

(4) The report of the Deputy Commissioner of Police or the Superintendent of Police, as the case may be and recommendations by the District Magistrate shall be submitted to the competent authority within time limit as specified under this Act, for temporary release of a convicted prisoner on regular parole.

(5) The period of release under this Section shall not count towards the actual sentence of a prisoner. No ordinary remission shall be granted for this period.

4. I have heard learned counsel for the parties and perused the record.

5. As per Section 3 of the Act, the convicted prisoner is entitled to be released under Section 3 of the Act for a period of 10

weeks in a Calender year cumulatively and the convicted prisoner may avail it in two parts. From the record, it is abundantly clear that the petitioner has already availed parole for a period of 65 days, w.e.f, 06.06.2023 to 11.08.2023. Apart from that, the petitioner/convicted prisoner can always avail regular parole for a period of 70 days and that is also available on two parts. Consequently, when the petitioner has already availed parole for a period of 65 days, he can avail parole for the remaining period, i.e., 05 days in second part.

6. Apart from that there is no substance in the plea raised on behalf of the State of Haryana that the present petitioner is “hard core convicted prisoner” and is not entitled to be released on parole by this Court. In fact, the petitioner had earlier approached this Court by way of filing Criminal Writ Petition No. 3524 of 2023 and the said petition for grant of parole was allowed on 02.06.2023. Vide the said order dated 02.06.2023, after due consideration of submissions made by learned counsel for the petitioner as well as State of Haryana, this Court had ordered the release of petitioner on parole for a period of 70 days. However, the petitioner had actually availed the parole for a period of 65 days only, as mentioned above. Thus, the petitioner can very well be released for a period of 05 days on parole in the second part.

7. Thus, in view of the above discussion, the present petition is allowed and the impugned order dated 02.11.2023

(Annexure P-2) passed by respondent No. 3 is set aside and the petitioner is ordered to be released on parole for a period of 05 days subject to his furnishing personal surety bonds in the sum of Rs. 1,00,000/-, to the satisfaction of the Superintendent of Prison concerned, where, he is lodged. The petitioner/convict shall be entitled to step out of the prison at 10.00 a.m. on 19.11.203 and shall surrender at jail gate at 05.00 p.m. on 24.11.2023. In case the petitioner does not surrender on time, he shall be immediately arrested by the SHO, having the jurisdiction over the area and shall be produced before the concerned Area Magistrate, for committing him to prison.

17.11.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No