

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.308

CRWP-1500-2024
Date of decision:28.02.2024

Gagan Kumar

...Petitioner

Versus

The State of Haryana and others

...Respondent(s)

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

Present: Mr.Hoshiar Singh Jaswal, Advocate for the petitioner.
Mrs. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

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 02.02.2024 (Annexure P-2) passed by respondent No. 2, whereby, the claim of the petitioner for grant of parole for solemnization of marriage of his niece was rejected, which is scheduled to be held on 05/06.03.2024.
3. Learned counsel for the petitioner contends that the petitioner was convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life. He also filed an appeal, i.e., Criminal Appeal No. 136-DB of 2011 before this Court, however, the same was also ordered to be dismissed by this Court. Learned counsel submits that the marriage of niece of the petitioner is scheduled to be held on 05/06.03.2024 at Gaurana Resorts, Adhoi, District Ambala. However, vide order dated 02.02.2024

for participating in the marriage of his niece was ordered to be rejected by respondent No.2. Learned counsel further submitted that 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. Learned counsel has also placed on record marriage card (Annexure P-1) of niece of the petitioner in support of his submissions.

4. On the other hand, learned State counsel has opposed the submissions made by the learned counsel for the petitioner on the ground that co-convict Naresh has not been granted the concession of parole and his regular parole case is under process with the office of District Magistrate, Kurukshetra. She has further submitted that as per the provisions of Section 11(6) of the Act, co-accused will not grant regular parole/furlough simultaneously and therefore, prayer of the petitioner is liable to be rejected. However, she has verified the factum of marriage of niece of the petitioner.

5. I have heard the learned counsel for the parties and perused the case file.

6. A short reply by way of an affidavit of the Superintendent District Prison, Karnal, has been filed on behalf of the respondents and the same is taken on record.

7. It is apt to refer to Section 3 of the Act, which reads as under:-

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.

8. As per Section 3 of the Act, the convicted prisoner is entitled to be released on parole for a period of 10 weeks in a Calendar year cumulatively and the convicted prisoner may avail it in two parts. From the perusal of the impugned order, it reveals that the parole case of one of the co-convict is under process before the District Magistrate, Kurukshetra and has not been decided by the competent authority. The State has taken the ground that as per Section 11(6) of the Act, co-accused will not grant regular parole/furlough “simultaneously” if parole request of another co-accused is pending consideration. However, as per bare reading of Section 11(6) of the Act, it reveals that parole cannot be granted to more than one accused simultaneously. However, as per the reply dated 27.02.2024, the parole case of the co-convict is under process before the District Magistrate, Kurukshetra and the same has not been decided so far. Therefore, the grant of parole to present petitioner cannot be considered as “simultaneously parole”.

9. The petitioner filed the present petition to attend the marriage ceremony of his niece, which is scheduled to be held on 05/06.03.2024 and

the said factum has been verified by the learned State counsel. Moreover, it is not disputed that the petitioner has earlier availed parole number of times and he never misused the concession of parole. Further, 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.

10. Thus, in view of the above discussion, the present petition is allowed and the impugned order dated 02.02.2024 (Annexure P-2) passed by respondent No.2 is set aside. The petitioner is ordered to be released on parole for a period of 14 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 01.03.2024 and shall surrender at jail gate at 05.00 p.m. on 14.03.2024. 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.

28.02.2024
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO