

CWP No. 17367 -2019(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17367 -2019(O&M)

Date of decision: 04.07.2019

Vijay Pal @ Goldy

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sandeep Singh Jattan, Advocate for the petitioner
Mr.Tanuj Sharma, AAG Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner along with co-accused was convicted under Sections 201, 302 and 364-A read with Section 34 IPC. He was sentenced to undergo RI for seven years under Section 201 IPC and imprisonment for life each under Section 302 and 364A IPC. It was further directed that the petitioner shall not be released till his last breath i.e. natural death. Appeal of the petitioner is pending before this Court. Petitioner sought parole for two weeks to attend marriage of his sister which is stated to be fixed for 10.7.2019.

Superintendent of Jail apparently exercising powers under Section 5A of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, after seeking legal opinion from the office of the Director General of Prisons, Haryana, Panchkula, declined the request of the petitioner for

parole on the ground that the Court had ordered that the convict will not be released till his last breath i.e. natural death. Petitioner has impugned the said order before this Court.

Reply of the State has been obtained. In the reply, State has taken the ground that since the sentence is life imprisonment till natural death, the petitioner cannot be released on parole.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has relied upon the authority of Supreme Court in Krishan Lal vs. State of Rajasthan and another, 2013 AIR (SC) 411, which was relied upon by this Court while allowing the prayer in CWP No.1989 of 2019, decided on 20.3.2019 titled as Vijay Pal @ Goldy vs. State of Haryana and others, in which the petitioner was allowed parole under Section 3(1)(a) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, after quashing the order passed by the authorities vide which the parole was declined. In that case, father of the petitioner has died.

Since, this Court in the earlier order has relied upon the authority of the Supreme Court, therefore, the authority of Krishan Lal's case (supra) needs to be examined as to whether Supreme Court has laid down general law that in case of sentence of life imprisonment till natural death, the convict can be released on parole notwithstanding the order passed by the Court.

Perusal of the said authority shows that in the said case Krishan Lal appellant along with others was sentenced to death. Sentence of death was converted into imprisonment for life by Supreme Court with the

condition that the appellant shall not be entitled to any commutation or premature release under Section 401 of Code of Criminal Procedure 1973. It is also noted that in the said case, counsel had submitted that Krishan Lal appellant in the said case, if sentenced to life imprisonment will never claim his premature release or commutation of sentence on any ground. It also comes out that in that case, said appellant Krishan Lal was twice released on regular parole for 20 and 30 days, respectively by the Parole Advisory Committee. However, his third parole for 40 days was declined. On account of the order passed by the High Court of State of Rajasthan, the Parole Advisory Committee again considered the case and allowed him parole for 40 days on 18.8.2010. The complainant in that case had approached High Court for quashing the said order. The High Court quashed the said order and it was this order which was challenged before the Apex Court. In this way, it is clear that in that case the Parole Advisory Committee has exercised the discretion to allow the parole. The facts of the present case are entirely different. In the present case, State has neither exercised such powers nor there was any undertaking before any Court by the counsel that the petitioner may not be granted death sentence and that he will not claim any commutation or remission under Section 401 of Code of Criminal Procedure.

Apex Court in the said case, after considering the Rules framed by the Government of Rajasthan, while disposing of the said petition, made the following observations:-

12. In view of the order of this Court dated 29.03.2001 in Subash Chander (supra), we reiterate that the appellant is not entitled to normal parole in terms of Rule 9, however, in emergent cases involving humanitarian consideration, the

Authority concerned is free to pass appropriate orders in terms of Rule 10 A(i) of the Rules. Even while considering such application, the Authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family and also pass appropriate orders giving them necessary protection. It is also made clear that if the Authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application.

It is apparent that the Apex Court passed the said order in the peculiar facts and circumstances of the said case.

In the present case, Rules of State of Haryana are entirely different. Since, the petitioner was convicted in kidnapping and murder case, he falls under the category of hardcore prisoner under Section 2(aa)(i) (3) of Haryana Good Conduct Prisoners (Temporary Release) Act, as amended in 2013. Cases of the hardcore prisoner are dealt with under Section 5A of the Act, which is reproduced as under:-

5A. Special Provisions for hardcore prisoners.-- Notwithstanding anything contained in sections 3 and 4, a hardcore prisoner shall not be released on temporary basis or on furlough:

Provided that a hardcore prisoner may be allowed to attend the marriage of his child, grand child or sibling; or death of his grand parent, parent, grand parent in-laws, parent-in-laws, sibling, spouse or child, under the armed police escort, for a period of forty eight hours to be decided by the concerned Superintendent Jail and intimation in this regard with full particulars of hardcore prisoner being released, shall be sent to the concerned District Magistrate and Superintendent of Police within twenty four hours.

Therefore, his only right is to be taken under the armed escort

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to attend marriage for 48 hours. Considering the fact that the sentence is imprisonment for life till natural death, there is every possibility that the petitioner may abscond. Therefore, at the most, he is entitled to attend marriage of his sister under the armed escort. It is to be noted that though father of the petitioner had died, mother of the petitioner is alive.

Considering the entirety of circumstances, I am of the view that the petitioner cannot be released on parole for two weeks. However, he is ordered to be taken under the armed escort to attend the marriage of his sister on 10.7.2019 in the morning hours and brought back after marriage.

Petition is accordingly partly allowed to the above noted extend.

04.07.2019
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes

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