

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRWP-3011-2020 (O&M)
Date of decision: 03.04.2020

Pawan Kumar

.....Petitioner

Versus

State of Haryana & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Jasraj Singh, Advocate
for the petitioner.

Mr. Deepak Sabharwal, DAG, Haryana
for the respondents.

ARUN KUMAR TYAGI, J (ORAL)

Case has been taken up for hearing through video conferencing.

CRM-W-176-2020

Prayer in this application is for exemption from filing original power of attorney and to attach photocopy of the same.

For the reasons mentioned therein, the application is allowed and exemption is granted from filing original power of attorney photocopy of which is taken on record.

CRWP-3011-2020

The petitioner has filed the present petition under Article 226/227 of the Constitution of India read with Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (for short, "the 1988 Act") for release of the petitioner on emergency parole due to death of his father Gyan Chand.

The petitioner has been convicted under Section 21(c) of

the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) in case FIR No.710 dated 27.07.2017 registered under Section 21(c) of the NDPS Act at Police Station City Hisar by learned Additional Sessions Judge, Hisar vide judgment of conviction dated 04.12.2017 and sentenced vide order of sentence dated 07.12.2017 to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- and in case of default of fine to further undergo rigorous imprisonment for 06 months.

The petition has been filed on the grounds that the petitioner has filed CRA-S-229-2020 before this Court which has been admitted vide order dated 20.01.2020. Father of the petitioner has died on 26.03.2020 and the petitioner being only son has to perform last rites scheduled for 04.04.2020. The petitioner through his mother approached the Deputy Commissioner/District Magistrate, Hisar for grant of 14 days emergency parole but the application was dismissed on the ground that the petitioner has not completed one year of his imprisonment after conviction in view of Rule 4(1) of the Haryana Good Conduct (Temporary Release) Rules, 2007 (for short, “the 2007 Rules”). There is no provision under the 1988 Act for denial of temporary release on parole on this ground and the order of rejection is illegal.

As per the office report, advance copy of the petition was e-mailed to the learned State counsel.

Mr. Deepak Sabharwal, DAG, Haryana has appeared on behalf of the respondents/State.

I have heard learned counsel for the petitioner and learned

State counsel.

Learned counsel for the petitioner has submitted that the application for temporary release of the petitioner on parole has been wrongly declined on the ground that the petitioner has not completed one year of sentence after conviction by relying on Rule 4(1) of the 2007 Rules but there is no provision under the 1988 Act for denial of temporary release on parole on this ground and the impugned order dated 28.03.2020 suffers from material illegality. Therefore, the same may be set aside and the petitioner may be ordered to be released on 14 days emergency parole. In support of his arguments, learned counsel for the petitioner has placed reliance on the observations in ***Deepak Vs. State of Haryana and another, 2014(4) RCR (Criminal) 531; CRWP No.1293 of 2014 Rakesh Vs. State of Haryana and other decided on 05.09.2014; CWP No.10279 of 2019 Gulab Singh Vs. State of Haryana and others decided on 18.04.2019*** and ***Mahavir Vs. State of Haryana and others, 2012(4) RCR (Criminal) 230.***

On the other hand, learned State counsel has admitted the facts regarding death of father of the petitioner and last rites of the father of the petitioner being scheduled for 04.04.2020. However, learned State counsel has submitted that the petitioner has been convicted for having in his possession commercial quantity of the contraband and the petitioner has not completed one year of imprisonment after conviction. The petitioner is not entitled to grant of parole. Therefore, the petition may be dismissed.

Section 3(1)(a) of the 1988 Act permits release of a prisoner on parole if the State Government is satisfied that a member of

the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill. Section 3(2) of the 1988 Act provides that period for which a prisoner may be temporarily released on parole on ground specified in Section 3(1)(a) of the 1988 Act shall not exceed three weeks.

Rule 4(1) of the 2007 Rules provides that a prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after the conviction and has earned his first annual good conduct remission under the 1988 Act.

In ***Mahavir's case (supra)*** a Coordinate Bench of this Court observed as under:-

“Thus, in view of the settled legal proposition that the Rules cannot override the provisions of the Act, the State was not justified in declining parole to the petitioner on the ground that he has not completed the requisite period of one year of his imprisonment. Even otherwise, the stand taken by the State is very harsh. The emergency parole is granted to the convict to attend various situations over which he has no control i.e. death or fixation of marriage of a relation. To say that the sister should postpone the marriage of her son or daughter, till the completion of one year of imprisonment by the convict so that she/he is able to attend the marriage, is demanding more than required. Rule 4(1) of the Rules may be invoked in case of parole which is to be granted for attending agricultural pursuits or house repairs which are recurring periodical feature in the life of human being and over which the convict has control or can plan in advance. Hence, stand of the State that the petitioner has not completed one year of his imprisonment is untenable.”

In ***Deepak's case (supra)*** a Division Bench of this Court

observed as under:-

“5. We have given our thoughtful consideration to the matter. It may be noticed that in terms of Section 3(1)(a) of the Act, a prisoner is entitled for parole if a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rule 2007 (for short 'the Rules'), which was published in the Haryana Government Gazette (Extra Legislative Supplement Part III dated 18.12.2007. There being no such restriction in the Act, the Rules cannot supersede substantive provision of the Act.”

Similar view was taken in **CRWP No.1293 of 2014 Rakesh Vs. State of Haryana and other decided on 05.09.2014** and **CWP No.10279 of 2019 Gulab Singh Vs. State of Haryana and others decided on 18.04.2019** that procedure provided by the 2007 Rules would not supersede the substantive provisions of the 1988 Act.

Admittedly, father of the petitioner has died on 26.03.2020 and his last rites/tervi is scheduled for 04.04.2020. Presence of the petitioner due to being the only son is necessary for performing last rites of his deceased father. In view of the above referred judicial precedents, application for temporary release of the petitioner on parole could not be declined on the ground that the petitioner has not completed one year of his imprisonment after conviction and the impugned order suffers from material illegality and is liable to be set aside.

In view of the above discussion, the petition is allowed and

In view of inability of the applicants/appellants to furnish sureties due to restrictions imposed under lock-down to prevent the spread of infection of Covid-19, the petitioner is ordered to be released on 14 days parole with effect from 04.04.2020 on furnishing of personal bond in the sum of Rs.1,00,000/- to Superintendent, Central Jail-I, Hisar and the petitioner shall surrender before Superintendent, Central Jail-I, Hisar on 19.04.2020 at 10:00 A.M.

The petitioner shall comply with all requisite conditions imposed under lock down/curfew as the case may be including conditions regarding his medical screening and social distancing.

A copy of this order be sent by e-mail to learned District & Sessions Judge, Hisar, learned State counsel and Superintendent, Central Jail-I, Hisar for information/requisite compliance.

03.04.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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