dated 4.2.1994, only show that the authorities concerned acted either without jurisdiction or for some extraneous consideration. It is borne on record that after petition under the Act was moved by Panchayat Samiti on 24.3.1992, private respondent appeared and filed reply. On his failure to appear thereafter, ex-parte proceedings were initiated. Collector thereafter considered the plea of Panchayat Samiti on merits and directed eviction of the private respondent. Operative part of the order reads as follows:-

> **"4.** No evidence has been put up on file to prove that rent at the rate of ₹50/- per month was paid after 16.5.77. However, photocopies of receipts have been placed on file but their execution has not been proved. Since the respondent has not paid the rent after 16.5.77, he is, therefore, considered illegal and unauthorised occupant of plot given in the headnote of application. Further, the plot in dispute is owned by Panchayat Samiti and it is, therefore, public premises, as described in Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973. According to rule 6 of Punjab Panchayat Samiti and Zila Parishads (Sale, lease and other alienation) property and Public Premises) Amendment Rules, 1983, the respondent is liable to 20 times the rent of the remaining period. Respondent, therefore, be evicted from the plot in dispute and is ordered to pay ₹1,80,000/- to the applicant. Order is announced on 4.2.94. A copy of this order may be pasted at conspicuous place nearby the plot in dispute. The case may come up on 9.3.94 for report on the compliance of this order."

(8) Private respondent tried to play hide and seek with various authorities thereafter. He moved an application for restoration of the application for setting-aside ex-parte proceedings and also appeal impugning the main eviction order. On 21.4.1994, Collector accepted the application for setting-aside ex-parte proceedings. Private respondent thereafter, withdrew the appeal pending before the Commissioner, Jalandhar Division. During the pendency of the proceedings, alleged compromise dated 13.2.1997 (Annexure P-7) was produced. In view of compromise, Panchayat Samiti withdrew the petition for eviction of the private respondent and order dated 28.10.1998 was passed. Later, application was moved for recalling the order dated 28.10.1998. Even this application was dismissed in default on 3.10.2003. Ultimately, it was allowed only on 3.3.2010, whereby Collector held that proceedings under Public Premises Act were

required to be initiated. Against this order, directing initiation of proceedings under the Act, Commissioner entertained appeal relying upon the compromise and directed that Panchayat Samiti may approach the civil court of competent jurisdiction. I am of the considered view that order Annexures P-6, P-9 and P-10 and compromise Annexure P-7 are against law and deserve to be set-aside. In fact, eviction proceedings had culminated on 04.02.1994 when Collector directed eviction of private respondent(s). It is inexplicable how subsequent applications were entertained by the authorities and various orde were passed. Such order being quasi-judicial in nature, could not have been passed on whims and fancies of the officer exercising power under the Act. The compromise entered into on behalf of the Panchayat Samiti by certain officials is non-est in the eyes of law. A government authority or its official(s) cannot enter into any compromise with a private respondent with regard to lease of a 'public premises'. Application for recalling order dated 28.10.1998 passed on basis of alleged compromise was decided after more than a decade. It is manifest misuse of authority for benefit of individuals whether private or government officials. All parties ensured that government property is not vacated in a prompt manner. Various applications moved by Panchayat Samiti were dismissed either in default or delaying tactics. Even authorities exercising power under Public Premises Act played in hands of private parties. Order passed subsequent to eviction order dated 04.02.1994 do not make any head or tail and are unsustainable in law. This court cannot turn a blind eye to flagrant violation of norms and procedures. This court, thus, needs to interfere and direct appropriate action. Under the circumstances, all order passed subsequent to order of eviction dated 4.2.1994 are hereby set-aside. Order dated 4.2.1994 is sustainable as private respondent was proceeded ex-parte after following due procedure. Even otherwise, the order is informed by reasons. As the private respondent succeeded in delaying the proceedings for four decades and enjoyed usufruct of the property, this writ petition is allowed with ₹5.00 lacs as costs. Deputy Commissioner is directed to get the premises vacated forthwith and submit a report within one month. He shall also initiate disciplinary and criminal proceedings against the delinquent officials and individuals due to whose connivance, interests of the Panchayat Samiti suffered for a period of four decades.

A. Jain

Before Darshan Singh, J

JAI KUMAR—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

Criminal Writ Petition No. 961 of 2015

July 6, 2015

Constitution of India, 1950—Art. 226—Haryana Good Conduct Prisoners (Temporary Release) Act, 1988—S. 3—Indian Penal Code, 1860—Ss. 34 302, 392, 394, 397—Parole beyond 4 weeks—Petitioner-prisoner filed application for parole to solemnize marriage of his two daughters—Said application was rejected on ground that during current year he had already availed parole of four weeks for house repair—Petitioner pleaded that earlier parole fell under section 3(1)(d) and instant application was filed under section 3(1)(b)—Held, that maximum period of four weeks of parole cannot be taken conjointly in relation to clauses (b) & (d) of sub-section (1) of section 3—Since convict had not availed any parole under section 3(1)(b) during current year, there was no bar to grant second parole as sought for —Thus, there was no bar to grant second parole.

Held, that a prisoner can seek temporary release for the marriage of himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter as per Section 3(1)(b) of the Act. Section 3(2)(b) provides that the period of parole cannot exceed four weeks where the prisoner is to be released on the ground specified in clause (b) or (d) of sub-section (1) of section 3 of the Act. So, four weeks parole can be granted under section 3(1)(b) or 3(1)(d) of the Act. The question as to whether both these provisions are independent and not conjointly had arisen before this Court in case Mahender Singh (supra).

(Para 9)

Further held, that maximum period of four weeks of parole cannot be taken conjointly in relation to clauses (b) & (d) of sub-section (1) of section 3 of the Act and also in view of the text of the clause (b) of sub-section (2) of section 3 of the Act. It is not a case of the respondents that the petitioner has availed any parole under section 3(1)(b) of the Act during the current year. There is no bar to grant the second parole. To support this view, reference can be made to the cases

Sushil Kumar and Kirpal Singh (supra). Thus, the action of the respondents in declining the application of the petitioner for grant of parole for the purpose of marriage of his daughters is not sustainable.

(Para 10)

Further held, that in view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned order dated 13.6.2015 is hereby set aside.

(Para 11)

A.S.Trikha, Advocate *for the petitioner*

Rajiv Doon, Assistant Advocate General, Haryana for the respondents

DARSHAN SINGH, J.

(1) This writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the order dated 13.6.2015, passed by the Superintendent, District Jail, Karnal declining the application of the petitioner for grant of parole for the marriage of his daughters. In the consequential relief, a direction has been sought to be issued to the Superintendent, District Jail, Karnal to reconsider the application of the petitioner and to grant emergency parole to him for performing the marriage of his two daughters, namely Aarti and Jyoti, which is stated to be fixed for 12.7.2015.

(2) The petitioner was convicted in case FIR No. 259 dated 10.10.1991, registered under Sections 302, 392, 394, 397 & 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") at Police Station Gohana, District Sonepat and was sentenced to undergo imprisonment for life by the then learned Additional Sessions Judge, Sonepat vide judgment dated 8.1.1997. Criminal Appeal No.193-DB of 1997, filed by the petitioner, was also disposed of by this Court vide judgment dated 28.2.2006. It is further pleaded that the petitioner has already availed the parole for four weeks from 26.3.2015 to 24.4.2015 for the purpose of repair of his house under Section 3(1)(d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (hereinafter referred to as "the Act"). The marital parole has been denied to the petitioner on the ground that during the same year, the second parole is not permissible.

(3) The present petition has been contested by the respondents on the grounds *inter-alia* that the prisoner cannot claim the temporary

release under the Act as a matter of right as it is only a concession given to him/her for good conduct and on certain conditions provided under the Act. It is further pleaded that the petitioner has already availed four weeks parole for the period from 26.3.2015 to 24.4.2015 for house repair as provided under Section 3(1)(d) of the Act. Therefore, he is not entitled for any further parole under Section 3(1)(b) or 3(1)(d) of the Act during the year 2015 and his application was rejected vide order dated 13.6.2015. It is further pleaded that the emergency parole under Section 3(1) (a) of the Act can be granted only when the member of a family of the prisoner has died or is seriously ill or the prisoner himself is seriously ill. With these pleas, learned State counsel prayed for dismissal of the writ petition.

(4) Learned counsel for the petitioner has contended that the fact regarding marriage of the daughters of the petitioner has not been disputed either in the impugned order dated 13.6.2015 or in the reply filed by the respondents. He further contended that the petitioner is entitled for the parole as per Section 3(1)(b) of the Act. The concession of the temporary release has been declined to the petitioner simply on the ground that he has already availed four weeks' parole for house repair which falls under Section 3(1)(d) of the Act. He further contended that the period for both the purposes is to be counted separately and the concession of parole cannot be denied to the petitioner on the ground that he has already availed the concession of parole for house repair. To support his contentions, he has relied upon the judgments rendered in the cases ***Mahender*** *versus* ***State of Haryana and Others***[1] ***Sushil Kumar*** *versus* ***State of Haryana***[2] and ***Kirpal Singh*** *versus* ***State of Haryana***[3].

(5) Learned State counsel has vehemently opposed the prayer of the petitioner on the ground that he has already availed four weeks' parole for the purpose of house repair under Section 3(1)(d) of the Act. He further contended that in a current year, the prisoner cannot be allowed more than four weeks' parole which the petitioner has already availed. So the request of the petitioner has been rightly declined.

(6) I have duly considered the aforesaid contentions.

(7) At the time of arguments, the factum regarding the marriage of the daughters of the petitioner has not been disputed at bar. Even in

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[1] *2003(1) R.C.R. (Criminal) 217*
[2] *2000(3) R.C.R. (Criminal) 6987*
[3] *1997(3) R.C.R. (Criminal) 735*

the impugned order and the reply filed by the respondents, this fact has not been specifically disputed.

(8) The petitioner is seeking parole for solemnizing the marriage of his two daughters, namely Aarti and Jyoti, fixed for 12.7.2015 with Anil and Sunil, both sons of Baljit Puri, residents of Village Datauli, District Sonepat. The concession of parole has been declined to him simply on the ground that he is not eligible for the second parole under Section 3 (1)(b) of the Act as he has already availed parole for four weeks from 26.3.2015 to 24.4.2015 as provided under Section under Section 3(1) (d) of the Act. But this approach of the Superintendent, District Jail, Karnal is not legally sustainable. Section 3 of the Act reads as under:-

> "3. **Temporary release of prisoners on certain grounds--** (1) the State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the official Gazette 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-
>
> (a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or
>
> (b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister'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 his father's undivided land actually in possession of the prisoner; or
>
> (d) it is desirable to do so for any other sufficient cause
>
> (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 grounds specified in clause (a) of sub-section (1), three weeks;
>
> (b) Where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section(1), four weeks; and

(c) where the prisoner is to be released on the grounds specified in clause (c) of sub-section (1), six weeks: Provided that the temporary release under clause (c) can be availed more than one during the year, which shall not, however, cumulatively exceed six weeks.

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

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all or any other ground specified there under."

(9) A prisoner can seek temporary release for the marriage of himself, his son, daughter, grandson, grand daughter, brother sister, sister's son or daughter as per Section 3(1)(b) of the Act. Section 3(2)(b) provides that the period of parole cannot exceed four weeks where the prisoner is to be released on the ground specified in clauses (b) or (d) of sub-section (1) of Section 3 of the Act. So, four weeks' parole can be granted under Sections 3(1)(b) or 3(1)(d) of the Act. The question as to whether both these provisions are independent and not conjointly had arisen before this Court in case ***Mahender Singh*** *(supra)*, wherein it has been laid down as under:-

"10. Coming to the facts of the present case, it is manifest that the Legislature in its wisdom has chosen to categorise and confine the benefit of parole to four weeks where the prisoner is to be released on the grounds specified in Clause (b) or Clause (d) of Sub-section (1) of Section 3 of the Act. The above stated provisions as such cannot be construed so as to draw a conclusion that maximum period of four weeks parole is to be linked up conjointly in relation to Clause (b) as well as Clause (d) as sought to be contended by the State counsel. If the intention of the Legislature was to limit the period of four weeks in respect of the grounds specified in Clauses (b) and (d) of Sub-section (1) of Section 3 of the Act, then it would have used the word 'and' in between Clauses (b) and (d) stated in Sub-section 2(b) of Section 3 of the Act and not the word or as noticed above. The scheme of the different period for which prisoner is to be released has been provided under Clauses (a) to (b) of Sub-section (2) of Section 3 of the Act, which itself is indicative of the fact that definite demarcation has been made where the parole is to be granted for the purposes specified therein. Ignoring the above limitation would tantamount to ignore the mandate of law. Admittedly, in

this case, the petitioner had already availed four weeks parole on the ground of house repairs under Clause (d) of Sub-section (1) of Section 3 of the Act. The prayer of the petitioner being covered under Clause (b) of Sub-section (1) of Section 3 of the Act, the benefit of parole under this clause cannot be denied to him merely because he had been granted four weeks parole on the ground of house repairs under Clause (d) of Sub-section (1) of Section 3 of the Act. There is no merit in the stand taken on behalf of the respondents."

(10) In view of the aforesaid ratio of law, maximum period of four weeks of parole cannot be taken conjointly in relation to Clauses (b) & (d) of sub-Section (1) of Section 3 of the Act and also in view of the text of the Clause (b) of sub-Section (2) of Section 3 of the Act. It is not a case of the respondents that the petitioner has availed any parole under Section 3(1)(b) of the Act during the current year. There is no bar to grant the second parole. To support this view, reference can be made to the cases ***Sushil Kumar*** and ***Kirpal Singh*** *(supra)*. Thus, the action of the respondents in declining the application of the petitioner for grant of parole for the purpose of marriage of his daughters is not sustainable.

(11) In view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned order dated 13.6.2015 is hereby set aside. The respondents are directed to reconsider the application of the petitioner for grant of parole to perform the marriage of his two daughters, fixed for 12.7.2015, in terms of Section 3(1)(b) of the Act, in accordance with law within five days from today. In view of the urgency of the matter, a copy of this order be furnished to learned counsel for the petitioner under the signatures of the Bench Secretary of this Court.

A. Jain