

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No.207 of 2014**

Virendra Kumar Sinha S/o Babulal Sinha Aged About 36 Years R/o Vivekanand Nagar, Ward No. 19, Opposite Aanand Kirana Store, P.S. Kotwali, Civil & Revenue Dist Rajnandgaon, CG Presently In Central Jail Durg, Through Babulal Sinha, S/o R.T. Sinha, Age 57 Yrs, R/o Vivekanand Nagar, Ward No. 19, Opposite Aanand Kirana Store, Ps Kotwali, Civil & Revenue Distt Rajnandgaon, C.G.

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Home (Jail), Mantralaya, Raipur, Dist Raipur, CG
2. The Jail And Correctional Services Chhattisgarh The Director General Prisoners, Jail Road, Raipur, Dist Raipur, CG
3. The Jail Superintendent, Central Jail Durg, Dist Durg, CG
4. The District Collector Rajnandgaon, Distt Rajnandgaon, CG
5. The Superintendent Of Police Rajnandgaon, Distt Rajnandgaon, CG

---- **Respondent**

For Petitioner	:	Shri Sunil Pillai, Advocate
For Respondent/State	:	Shri R. K. Gupta, Dy.A.G.

Order On Board**17/08/2015**

This petition has been filed for appropriate direction for grant of leave and release for a period of 10+2 days under the provisions of Rule 6 of MP/CG Prisoner Leave Rules, 1989 (In short "the Rules of 1989")

2. Learned counsel for the petitioner submits that the petitioner after having been convicted for offence under Sections 457, 307 of IPC, was sentenced to undergo RI for 10 years. The petitioner, by now, has completed more than 7 & ½ years of sentence awarded to him including remission. The petitioner applied for grant of first regular leave before the jail authorities, which was forwarded to the District Magistrate.

The Counselor of the area where the petitioner last resided, gave a favourable report for release. However, the victim/wife of the petitioner were given undue weightage and on that basis, application of the petitioner is rejected, which is against the spirit of the provisions contained in Rule 6 of the Rules of 1989.

3. Learned State counsel submits that upon receipt of petitioner's application, the District Magistrate obtained report from the Superintendent of Police, who in turn, obtained a report from City Superintendent of Police and Town Inspector, Police Station Kotwali, District Rajnandgaon, placed on record as Annexure R-1 cumulatively. In the report of Town Inspector and City Superintendent of Police, it has been revealed that if the petitioner is released, he may torture his wife and in-laws or he may also commit any other incident to cause physical or mental assault on his wife.

4. Provision contained in Rule 6 of the Rules of 1989 reads as under:-

6. Sanctioning Authority for first leave- (a) “If the District Magistrate, after making such enquiry as he may consider necessary, is satisfied that the request for grant of leave can be granted without detriment to public interest, he shall issue to the Superintendent a duly signed and sealed warrant in Form “A” to the prisoner. The District Magistrate shall enter in the warrant the number of days that will be required for the journeys by the shortest practicable route to and from the place at which during his leave the prisoner proposes to reside or if he proposes to visit more than one place, the farthest place from the Jail which he proposed to visit.

Note- The District Magistrate is responsible for the proper carrying out of these instructions. He may of course, consult the District Superintendent of Police on the advisability of granting the leave. The Superintendent of Police should also obtain the opinion of the Gram Panchayat of the village, where the prisoner resided before conviction and sent to the District Magistrate alongwith his report. But the responsibility for the action is that of the District Magistrate. He should use his discretion and should refuse to grant leave only in cases in which he is satisfied that release is fraught with danger to the public safety. Security should be demanded only when it is really necessary, for example, when there is

reasonable apprehension that the prisoner will break leave. When security is required, the District Magistrate of the place where the surety resides should be asked by the releasing District Magistrate to accept the surety and not call the surety to his own headquarters. If the prisoner intends to visit another district, where his near relatives reside, the concerning District Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

(b) If the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected.”

5. A fair and logical interpretation of the provision would show that the application may be allowed and leave may be granted where the District Magistrate satisfied that grant of such leave would not be detrimental to the public interest. The note appended to the Rule 6 clearly shows that the Superintendent of Police should obtain the opinion of the Gram Panchayat of the village, where the prisoner resided before conviction and send to the District Magistrate alongwith his report.

6. In the present case, the Counselor of the area, where the petitioner last resided, has recommended for grant of leave. The provision contained in Rule 6 also indicates that the District Magistrate may refuse to grant leave only in case, in which, he is satisfied that the release is fraught with danger to the public safety. The aforesaid provision further require consideration of the application of a prisoner for grant of leave keeping in view whether the release would be detrimental to the public interest and where such release is fraught with danger to the public safety. The report, which has been placed before the District Magistrate, though may contain apprehension that upon release, the petitioner may harass his wife and in-laws, there is absolutely no material to warrant that such release would be detrimental to the public interest or is of such magnitude that it can be said that the release is fraught with danger to the public safety. There is no other material put forth by the jail authorities to indicate that the grant of leave would be detrimental to the public

interest. The petitioner has earned remission also and has remained in jail for more than 7 years. Therefore, for all these reasons, the petition has to be allowed and is accordingly allowed. The District Magistrate is directed to issue necessary release orders granting leave to the petitioner for the period applied for. The Magistrate shall pass necessary release order within a period of 15 days from the date of receipt of a copy of this order.

Certified copy, as per rules.

**Sd/-
Manindra Mohan Shrivastava
Judge**