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HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 182 of 2015**

1. Santhram Sinha S/o Shri T. R. Sinha, Aged About 42 Years R/o Sheetalapara, Ward No.4, P.S. Chaarama, Tehsil-Chhaarama, Civil And Revenue District Uttar Bastar Kanker (Chhattisgarh)

Through : Narottam Kumar Sinha, S/o Shri Ganga Ram Sinha, Aged About 28 Years, (Nephew Of Petitioner) R/o Sheetalapara, Ward No.4, P.S. Chaarama, Tehsil-Chaarama, Civil And Revenue District Uttar Bastar Kanker, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Home (Jail) Mantralaya, Raipur, District Raipur, (Chhattisgarh)
2. The Jail and Correctional Services Chhattisgarh The Director General Prisoners, Jail Road, Raipur, (Chhattisgarh)
3. The Jail Superintendent Central Jail Raipur, District Raipur, (Chhattisgarh)
4. The District Collector Uttar Bastar Kanker, (Chhattisgarh)
5. The Superintendent Of Police, Uttar Bastar Kanker, District Uttar Bastar Kanker, (Chhattisgarh)

---- Respondent

For Petitioner	Shri Sunil Pillai, Advocate
For Respondent/State	Shri R.K. Gupta, Dy. Adv. General

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/01/2016**

Heard learned counsel for the parties.

1. The issue brought before this Court in the present writ petition is about applicability of Rules 4 and 6 of the Chhattisgarh Prisoner's Leave Rules, 1989 (*for short 'the Rules, 1989'*) under which the petitioner had applied for leave, but the same has been refused by the District Magistrate, Uttar Bastar, Kanker.
2. The petitioner was accused of committing murder and eventually he was convicted by the First Additional Sessions Judge, Kanker, on 20-7-2006 for committing offence under Section 302 of the Indian Penal Code. The petitioner is presently undergoing the sentence of life imprisonment at Central Jail, Raipur. Having already suffered jail sentence of about 13 years, the petitioner applied for leave under Rule 4 of the Rules, 1989. The said application was recommended by the Superintendent, Central Jail, Raipur, and was sent to the District Magistrate, Uttar Bastar, Kanker, for orders in accordance with the Rules.
3. The District Magistrate, thereafter, sought a report from the Superintendent of Police, Uttar Bastar, Kanker, who, in turn, sought information from the village Panchayat and other persons in the locality including the relatives of the victim. The Station House Officer, Police Station, Chaarama, made enquiries from the persons who are proposed to be his sureties in the event leave is granted. The sureties confirmed the fact that they will stand surety and the village panchayat did not object to the petitioner's release on leave,

however, the relatives of the victim raised objection on the petitioner's release. Acting on this objection, the District Magistrate refused to accord permission to sanction leave to the petitioner.

4. Shri Sunil Pillai, learned counsel appearing for the petitioner, would argue that consideration of an application for leave from prison under the Rules, 1989 is governed within the parameters provided under Rule 6, however, under the said Rules it is not a ground that on objection being raised by the relatives of the victim prayer for leave should be refused. Shri Pillai, would, thus, submit that refusal is on a ground not contemplated in law, therefore, it is perverse and illegal. To buttress his contention, learned counsel would place reliance upon the order passed by the coordinate Bench of this Court in **Virendra Kumar Sinha v. State of Chhattisgarh & Others**¹ and a single bench order of High Court of Gujarat at Ahmedabad in **Pravin Haklo Natvarlal Patel – Thro. Kokilaben N Patel v. State of Gujarat & 2**².
5. Per contra, Shri R.K. Gupta, learned Dy. Adv. General, would submit that Rule 6 permits refusal to grant leave in case where District Magistrate is satisfied that release is fraught with danger to the public safety, therefore, any objection by any individual be it relative of the victim would be construed as danger to the public safety and, as such, the refusal does not suffer from any infirmity whatsoever.

¹ WPCR 207 of 2014 (decided on 17-8-2015)

² Spl. Cr. Application No.2478 of 2010 (decided on 9-12-2010)

6. Rules 4 and 6 of the Rules, 1989 being relevant are reproduced hereunder for ready reference :

4. Conditions of Leave.--The prisoners shall be granted leave under sub-section (1) of Section 31-A of the Act on the following conditions, namely:--

- (a) He fulfills the conditions laid down in Section 31-A of the Act;
- (b) He has not committed any offences in jail between the date of application for leave and receipt of the order of such leave;
- (c) The releasing authority must be satisfied that the leave may be granted without detriment to the public interest;
- (d) He gives in writing to the Releasing Authority the place or places which he intends to visit during the period of his leave and undertake not to visit any other place during such period without obtaining prior permission of the Releasing Authority in that behalf; and
- (e) He should furnish security to the satisfaction of the Releasing Authority if such security is demanded by the Releasing Authority.

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

fartherest 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.”

7. Under Rule 4 of the Rules, 1989 a prisoner who fulfills the conditions laid down in Section 31-A of the Prisoners Act, 1900 (*for short 'the Act, 1900'*); has not committed any offence while in jail and has completed more than two years of jail sentence is eligible for general leave. While considering such application, the District Magistrate is

enjoined under Rule 6 to consider whether refusal to grant leave is fraught with danger to the public safety. If such is not the eventuality leave is ordinarily allowed, without detriment to public interest.

8. In the case at hand, the record do not suggest that petitioner's release is either detriment to public safety or it is fraught with danger to public safety. Even if an objection is raised by the relatives of the victim, that by itself would not amount to danger to public safety unless the members of the locality raise such plea before the Station House Officer/Superintendent of Police that petitioner's release would create law and order situation. Ordinarily, victim's family would never agree for release of a prisoner for emotional and sentimental constraints, however, mere objection by relatives of the victim has not been made a ground for refusal to grant leave under Rule 6 of the Rules, 1989.
9. The report of the Station House Officer/Superintendent of Police has nowhere stated that petitioner's release is detrimental to public interest. On the contrary, the village Pramukh has consented for petitioner's release, therefore, refusal by the District Magistrate to accord leave to the petitioner under Rules, 1989 does not seem to be on any permissible ground.
10. While taking the above view it would be profitable to refer to the law laid down by the Supreme Court in **State of Maharashtra and**

another vs. Suresh Pandurang Darvakar³, wherein interpreting the similar provision contained in the Prison (Bombay Furlough and Parole) Rules, 1959, the Supreme Court has held that for temporary release of a prisoner, there are twin requirements i.e. (i) a relative of the applicant should be willing to receive him while on furlough; and (ii) he must be ready to enter into a surety bond. In addition there should be a no objection from the District Magistrate or the Superintendent of Police on the ground of public peace and tranquility.

11. In **Suresh Pandurang Darvakar** (supra), the Supreme Court held thus:-

“9. Unfortunately, the High Court does not appear to have addressed itself to these relevant aspects. It took note of the fact that nobody was willing to stand surety for release of the respondent. The High Court directed that he can be released on furnishing surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. There is another requirement. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rules 6, Rule 4 (4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. The High Court has not recorded any finding that the report of the District Magistrate and/or Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquility.”

(Emphasis supplied)

3 AIR 2006 SC 2471

12. In the case at hand, the persons, who desired to stand surety for the petitioner, have supported the petitioner's application for leave and there is no report by the District Magistrate or the Superintendent of Police that the release of the petitioner shall be endanger to the public peace and tranquility.
13. In view of the aforesaid facts and circumstances of the case, the order dated 27-4-2015 (Annexure – P/4) passed by the District Magistrar, Uttar Bastar, Kanker, is quashed. The petitioner is held to be entitled to leave for the period prayed by him in his application. Let the concerned District Magistrate and the Superintendent, Central Jail, do the needful in the matter within a period of 15 days from the date of submission of certified copy of this order.
14. It is made clear that on completion of the leave period, the petitioner shall surrender before the Jail authorities immediately and shall not commit any offence or create any law and order situation during the period of leave.
15. *Ex-consequenti*, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri

