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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (CRIMINAL) NO. 69 OF 2016

- Avinash Singh S/o Rajesh Kumar Rajput, aged about 22 years, R/o Janta Colony, J-248, Tilak Nagar, P.S. Gudiyari, Raipur, Civil & Revenue District Raipur (C.G.), through Rajesh Kumar Rajput, S/o Shri Sadhu Singh Rajput, aged about 45 years, R/o Janta Colony, J-248, Tilak Nagar, P.S. Gudiyari, Raipur, Civil & Revenue District Raipur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through its Principal Secretary, Department of Home (Jail), Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (C.G.)
2. The Jail and Correctional Services Chhattisgarh, the Director General Prisons, Jail Road, Raipur, District Raipur (C.G.)
3. The Jail Superintendent, Central Jail, Raipur, District Raipur (C.G.)
4. The District Magistrate, Raipur, District Raipur (C.G.)
5. The Superintendent of Police, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Sunil Pillai, Advocate.
For Respondents	:	Mr. Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/11/2016

1. The present petition has been filed invoking the provisions of Article 226 of the Constitution of India assailing the order dated 7.12.2015 (Annexure P-4) passed by the District Magistrate, Raipur whereby the claim of the Petitioner for temporary leave has been rejected.
2. Counsel for the Petitioner submits that the said order (Annexure P-4) has been passed in the light of the order of the Superintendent of Police, Raipur, dated 23.11.2015 (Annexure P-3) wherein the Superintendent of Police in a one line order, without considering the report dated 3.10.2015 of the Station House Officer who was entrusted to conduct an inquiry and to submit a report in respect of grant of temporary leave to accused, had

given an adverse recommendation ignoring the recommendation of the Station House Office for temporary leave.

3. Counsel for the Petitioner refers to the provisions of Rules framed in this regard which in the State of Chhattisgarh is known as The Chhattisgarh Prisoner's Leave Rules, 1989 (in short, 'the Rules of 1989'). Rule 4 deals with the conditions of leave and Rule 6 deals with the powers of Sanctioning Authority while grant of first leave. Highlighting on the Note affixed to Rule 6, Counsel for the Petitioner submits that it clearly reflects that the District Magistrate can refuse to grant leave only in case if he is satisfied that release is fraught with danger to the public safety. Counsel for the Petitioner submits that this itself implies that under all other circumstances the application for grant of temporary leave has to be considered objectively and cannot be rejected as a matter of routine.

4. Counsel for the Petitioner further relies upon the decision of this Court in Writ Petition (Criminal) No. 168 of 2014, decided on 10.4.2015. He submits that the facts of the present case is also identical and he deserves for a similar decision on the ground of parity.

5. Counsel for the State however opposing the petition submits that the Petitioner was found to be in possession of commercial quantity of Ganja and it was for this reason that he has been convicted and sentenced to undergo R.I. for 20 years under the provisions of N.D.P.S. Act and therefore considering the gravity of offence the authorities concerned have rightly recommended and the District Magistrate has rightly rejected the application for grant of temporary leave.

6. Having considered the rival contentions put forth on behalf of either side what is relevant at this juncture is that the State Government has enacted specific Rules in respect of grant of leave to the prisoners in exercise of its powers conferred upon it under the provisions of the

Prisoners Act, 1900. The said Rules in the State of Chhattisgarh are known as 'The Chhattisgarh Prisoner's Leave Rules, 1989'. Rule 4 of the Rules of 1989 deals with the conditions of leave. For ready reference the said clause is reproduced herein below :

“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.”

7. Similarly, Rule 6 of the Rules of 1989 deals with the powers conferred upon the sanctioning authority while considering the application for grant of leave, which again for ready reference is reproduced below :

“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 send to the District Magistrate along with 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 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 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.”

8. If we take into consideration the Note attached to Rule 6(a) this itself clearly reflects that there is only one ground on which leave can be refused by the District Magistrate and it is in case where he is satisfied that the release of the prisoner is fraught with danger to the public safety and under no other circumstances can the leave be refused as a matter of routine without cogent reasons. Further perusal of Rule 6 also clearly depicts that before the District Magistrate takes a decision on the application for grant of temporary leave he has to consult with the District Superintendent of Police who in turn has to obtain the opinion of the Gram Panchayat of the village where the prisoner resides.

9. In the instant case what clearly reflects is the fact that when the application for grant of temporary leave was moved by the Petitioner the Superintendent of Police in turn had referred the matter to the concerned Police Station under whose jurisdiction the area of the residence of the Petitioner falls. The Station House Officer vide his report dated 3.10.2015 had given a report that the Petitioner has not been found to be a habitual offender and after discussing with the nature and conduct of the Petitioner the Station House Officer in his report in paragraph 4 and also in its

conclusion portion has recommended the case of the Petitioner for being released on 10 days of leave (parole).

10. However, in spite of the recommendation being made in favour of the Petitioner the Superintendent of Police while recommending the case to the District Magistrate vide his recommendation dated 23.11.2015 (Annexure P-3) held that the Petitioner is not likely to lead a peaceful life in case of being released on parole/temporary leave. This recommendation of the Superintendent of Police, Raipur though reflects to be on the basis of an enquiry done but no enquiry has been placed on record except for the report of the Station House Officer dated 3.10.2015. Thus, it appears that the recommendation of the Superintendent of Police was without any basis and nor is there any enquiry as such conducted on the basis of which the report has been made by the Superintendent of Police. It further reflects that the District Magistrate while issuing Annexure P-4, dated 7.12.2015, was only guided by the recommendation of the Superintendent of Police which otherwise was without any basis.

11. Thus, apparently, it reflects that both the Superintendent of Police as well as District Magistrate have not perused the report of the Station House Officer nor have they given any reason to take a different view than what has been recommended by the Station House Officer. Neither does the reply of the State Government show of any other enquiry other than the one which has been held by the Station House Officer to have been conducted. In the absence of these materials coupled with the fact that there is already a decision in Writ Petition (Criminal) No. 168 of 2014, dated 10.4.2015 under similar circumstances allowing the petition and quashing the order of the District Magistrate, this Court is also of the opinion that in the present case also the order of the District Magistrate in rejecting the application vide its order dated 7.12.2015 (Annexure P-4) is

baseless without any substance and cogent reasons and is also contrary to the report of the Station House Officer and thus the same deserves to be and accordingly quashed.

12. It is further held that the recommendation made by the Superintendent of Police, Raipur, dated 23.11.2015 (Annexure P-3) also is without application of mind and without proper appreciation of the report of the Station House Officer nor does the order give any specific reason to take a different view than as recommended by the Station House Officer and therefore the said order dated 23.11.2015 also stands quashed.

13. As a consequence, in the light of the quashment of the order dated 7.12.2015 (Annexure P-4), the case of the Petitioner for grant of temporary leave/parole is again ordered to be placed before the District Magistrate who in turn in consultation with the Superintendent of Police in the light of the recommendation made by the Station House Officer in his report dated 3.10.2015 and also keeping in view Rule 6 of the Rules of 1989 in this regard, shall pass a fresh order within a period of 15 days from the date of presentation of the certified copy of this order.

14. The petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge