

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 393 of 2017

- Vijay Shankar Bhorathiya (Prisoner No. 252/46) S/o Rambilas Bhorathiya Aged About 54 Years R/o Village Asandih Post Gudru P.S. Raghunathnagar, District Balrampur Ramanujganj Chhattisgarh Through Devendra Kumari D/o Rambilas Aged About 22 Years R/o Village Asandih Post Gudru P.S. Raghunathnagar District Balrampur Ramanujganj Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mantralaya Mahanadi Bhawan New Raipur Chhattisgarh
2. Director General Jail, Raipur District Raigarh Chhattisgarh
3. Jail Superintendent Central Jail Ambikapur, District Surguja Chhattisgarh
4. Collector/ District Magistrare Balrampur Ramanujganj, District Balrampur Ramanujganj Chhattisgarh

---- Respondents

For Petitioner	:	Shri Shakti Raj Sinha, Advocate.
For State/Respondents	:	Shri Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/10/2017

Heard.

1. Petition under Article 226 of Constitution of India has been brought by the petitioner with a prayer to exercise jurisdiction and quash the impugned order dated 1.8.2017 & communication dated 2.8.2017 (Annexure P-1) passed by the respondent No.4.
2. Petitioner stands convicted under Section 396 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment with fine of Rs.1,000/-. He has also been convicted and sentenced under Section 25 of the Arms Act.
3. Learned counsel for the petitioner submits that petitioner is undergoing sentence of life imprisonment in connection with his conviction by the criminal Court and presently he is in jail for the last more than 12 years. He further

submits that after two years of continuous imprisonment, the petitioner became entitled for benefit of leave under the C.G. Prisoner's Leave Rules, 1989 for short 'the Rules of 1989') and therefore the petitioner preferred an application for grant of leave for the first time which was recommended by the jail authorities. His application for leave under Rule 6 of the Rules of 1989 has been arbitrarily rejected by respondent No.4 by order dated 01.08.2017(Annexure P-1). It is submitted that the order impugned has been passed in a mechanical and casual manner, which is also contrary to the provision of Rule 6 of the Rules of 1989. It is further submitted that the order passed by respondent No.4 is not in conformity with the provisions of the Rules of 1989 because no reason has been assigned in accordance with Rule 6 of the Rules of 1989. It is also submitted that on inquiry being made by the concerned police-station, the sureties gave no objection and took responsibility to send back the petitioner to jail. Even the concerned Gram Panchayat expressed its 'no objection' if the petitioner is released on leave. Despite all this, the order of rejection has been passed by respondent No.4. Therefore, a prayer has been made to set aside the order impugned and grant relief to the petitioner.

4. Learned counsel for the petitioner has also placed reliance on the Order passed by this Court in ***Santhram Sinha Vs. State of Chhattisgarh & others*** in WPCR No.182 of 2015.
5. Learned counsel for the respondents though opposed the petition but submits that he has no objection if the petition is disposed of with suitable directions.
6. From perusal of the order impugned it appears that the requirements for consideration of application for leave under the Rules of 1989 have not been complied with. There is no whisper in the order of respondent No.4 dated 01.08.2017 that the release of prisoner would be detrimental to public interest or for public safety. Report of the Superintendent of Police concerned also appears to be based on just conjecture and surmises.
7. This Court has clearly laid down in the order dated 18.11.2016 passed in WP(Cr) No.29 of 2017, parties being Rakesh Shende Vs. State of Chhattisgarh, that application of a prisoner for grant of leave should not be decided in a casual and perfunctory manner and directions to be followed before disposing of such application have also been issued by this Court. In these circumstances, it

seems appropriate to dispose of this petition at the motion stage.

8. Accordingly, the petition is allowed and the impugned order (Annexure P-1) passed by respondent No.4 is hereby set aside. Respondent No.4 is directed to reconsider application of the petitioner for grant of leave in the light of directions issued by this Court in WP(Cr.) No.192 of 2017 and also in the matter of Rakesh Shende (supra).
9. Considering the submissions made, without any interference into the authority of the District Magistrate (respondent No.4), it is directed that if there does not exist any valid ground to withhold the petitioner, then the respondent No.4 shall pass the order on the petitioner's application, within a period of 15 days from the date of production of certified copy of this order, granting him leave for the period as per his entitlement.
10. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE