

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.91 of 2017

Bachcha @ Abdul Javad, S/o Shri Bakar Ali, aged about 29 years, R/o Near Nuri Masjid, Farid Nagar, Supela, Bhilai, Distt.Durg (CG) through Brother-in-law Riyaz Mirza, S/o Shri Aslam Mirza, aged about 37 years, R/o House No.243, Nuri Masjid, Farid Nagar, Supela, Bhilai, Distt.Durg (CG)

---- Petitioner
(In Jail)

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home (Police), Mahanadi Bhavan, Naya Raipur, District Raipur (C.G.)
2. Jail & Correctional Services, Chhattisgarh, Director General Prisons, Jail Road, Raipur, District Raipur (C.G.)
3. Jail Superintendent, Central Jail, Durg , District Durg (C.G.)
4. District Magistrate, District Durg (C.G.)
5. Superintendent of Police, District Durg (C.G.)
6. Station House Officer, Police Station Supela, Distt.Durg (CG)

---- Respondents

For Petitioner:	Mr. Rahim Ubwani, Advocate.
For Respondents / State:	Mr. Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/05/2017

1. The petitioner's application for grant of leave under Rules 4 and 6 of the Chhattisgarh Prisoner's Leave Rules, 1989 (hereinafter called as 'Rules of 1989') has been rejected by the impugned order holding that he is likely to be absconded if he is released, against which this writ petition under Article 226 of the Constitution of India has been filed.

2. Learned counsel for the petitioner would submit that the impugned order is contrary to the decision passed by this Court in WP (Cr) No.29 of 2016 (Rakesh Shende Vs. State of Chhattisgarh and others).
3. On the other hand, learned State Counsel would support the impugned order.
4. In exercise of the power conferred by Section 31-E of the Prisoners Act, the erstwhile State of Madhya Pradesh had enacted the Madhya Pradesh Prisoner's Leave Rules, 1989 which is also applicable in the State of Chhattisgarh as duly adopted. Rule 4 of the Rules of 1989 provides for conditions of leave. Rule 6 provides for Sanctioning Authority for first leave and a Note has also been appended to it. Rules 4 and 6 of the Rules of 1989 state as under: -

"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 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 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. On careful reading of the aforesaid provisions, it is quite vivid
that the petitioner prisoner is eligible to be considered for grant of

temporary leave in accordance with Section 31-A of the Prisoners Act, if he has been convicted and sentenced to a term of imprisonment of not less than three years, for a period not exceeding twenty-one days in a year, excluding the time required for journeys to the first place of his visit immediately after departure from the prison and from the place of last visit to the prison back. By virtue of Rule 4(c) of the Rules of 1989, the releasing authority, who is the District Magistrate, has to be satisfied that the leave may be granted without detriment to the public interest. Note appended to Rule 6 would show that the District Magistrate is the authority responsible for proper carrying out of the Rules of 1989, he has to make enquiry and has to 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.

6. At this stage, it would be expedient to notice the binding observations of Their Lordships of the Supreme Court highlighting the concept of parole in the matter of **Dadu alias Tulsidas v. State of Maharashtra**¹ while considering the constitutional validity of Section 32-A of the NDPS Act, which read as under: -

"6. Parole is not a suspension of sentence. The conviction continues to be serving the sentence despite grant of parole under the statute, rules, jail manual or the Government Order. "Parole" means the release of a prisoner temporarily for a special

¹ (2000) 8 SCC 437

purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually being in jail serving part of sentence."

7. It is extremely pertinent to notice the sea difference between parole and bail. Parole is an administrative action and it is a temporary release whereas bail is suspension of sentence in case of conviction. A Constitution Bench of the Supreme Court in the matter of Sunil Fulchand Shah v. Union of India and others² has observed as under in paragraphs 24, 25 and 26: -

"24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word "bail" is surety. In *Halsbury's Laws of England*³, the following observation succinctly brings out the effect of bail:

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.

25. "Parole", however, has a different connotation than bail even though the substantial legal effect of both bail and parole may be the release of a person from detention or custody. The dictionary meaning of

² (2000) 3 SCC 409

³ Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.

"parole" is:

The Concise Oxford Dictionary - (New Edition)

"The release of a prisoner temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behaviour; such a promise; a word of honour."

Black's Law Dictionary - (6th Edition)

"Release from jail, prison or other confinement after actually serving part of sentence; Conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order."

According to The Law Lexicon⁴, "parole" has been defined as:

"A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole."

According to Words and Phrases⁵:

" 'Parole' ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence. People ex rel Rainone v. Murphy⁶.

'Parole' does not vacate sentence imposed, but is merely a conditional suspension of sentence. Wooden v. Goheen⁷.

A 'parole' is not a 'suspension of sentence', but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the court. Jenkins v. Madigan⁸.

A 'parole' does not suspend or curtail the sentence originally imposed by the court as

4 P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words & Phrases, p. 1410

5 Words & Phrases (Permanent Edition), Vol. 31, pp. 164, 166, 167, West Publishing Co.

6 135 NE 2d 567, 571, 1 NY 2d 367, 153 NYS 2d 21, 26

7 Ky, 255 SW 2d 1000, 1002

8 CA Ind, 211 F 2d 904, 906

contrasted with a 'commutation of sentence' which actually modifies it."

26. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking, an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of this Court in [State of Haryana v. Mohinder Singh](#)⁹ to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction."

8. Very recently, in the matter of **State of Gujarat and another v. Lal Singh alias Manjit Singh and others**¹⁰, the Supreme Court has reiterated the law laid down in **Sunil Fulchand Shah** (supra) and has delineated the scope of jurisdiction while granting temporary parole as under: -

"33. So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In *Sunil Fulchand Shah v. Union of India* (supra) the Constitution Bench while dealing with the grant of temporary release or parole under Sections 12(1) and Section 12(1-A) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate

9 (2000) 3 SCC 394 : JT (2000) 1 SC 629

10 (2016) 8 SCC 370

that the Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu."

9. Aforesaid enunciation of law would bring me back to the facts of the present case to be considered as to whether the learned District Magistrate is justified in rejecting the application for parole.

10. It is well settled law that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the Constitution of India. It is also well settled that grant of parole being essentially an executive function, it is for the Government to consider the request made by the convict for the purpose and to pass an appropriate order on it. If, however, the order passed by the Government declining parole is based upon irrelevant ground or extraneous consideration or is otherwise wholly unsustainable being an order which no reasonable person could in the facts and circumstances of case have passed or is totally perverse, it is open to the court to exercise its power under Article 226 of the Constitution of India to set aside the order and direct the release of a convict on parole.

11. Applying the principle of law laid-down by the Supreme Court in the above-stated judgments (supra), if the facts of the present case are examined, it is quite vivid that the course adopted by the District Magistrate is clearly contrary. The report submitted by

the Superintendent of Police clearly shows that the petitioner is likely to be absconded if he is released. The concerned clerk has submitted the report which has been approved by the District Magistrate and thereafter copy of the note-sheet has been given to the petitioner under Right to Information Act. It has been passed mechanically. There is no application of mind by the District Magistrate. No proper enquiry has been made by the District Magistrate. No finding has been recorded that release of the petitioner is detrimental to public interest. Simply, in a very casual and perfunctory manner, such an application has been decided which is clearly impermissible in law and cannot be approved.

12. Consequently, I am of the considered opinion that the order passed by the District Magistrate, Durg (Annexure P-1) deserves to be quashed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India and is accordingly quashed. It is directed that the respondents shall consider the case of the petitioner to grant him the privilege of release / parole, in accordance with law indicated herein-above within forty days from the date of production of a copy of this order.

13. The writ petition is allowed to the extent indicated herein-above. There shall be no order as to costs.

14. A copy of this order be sent to the Principal Secretary (Home),
State of Chhattisgarh for information and needful action.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-