

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 206 of 2017

Subhashchand, S/o. Shri Kaliram, Aged About 32 Years, R/o. Village Sarangpur, P. O. Beejatarai, P. S. -Mungeli, District Mungeli (Chhattisgarh)
Through : Smt. Savita Bai, W/o. Shri Chatur Singh, Aged About 37 Years, R/o. Village -Sarangpur, P.O. Beejatarai, Thana -Mungeli, District -Mungeli (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Its, Principal Secretary, Department Of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. The Jail and Correctional Services Chhattisgarh, The Director General Prisons, Jail Road Raipur, District Raipur (Chhattisgarh).
3. The Jail Superintendent, Central Jail Bilaspur, District Bilaspur (Chhattisgarh).
4. The District Magistrate Mungeli, District Mungeli (Chhattisgarh).
5. The Superintendent Of Police, Mungeli, District Mungeli (Chhattisgarh).

-----Respondents

For Petitioner	: Mr. Sunil Pillai, Advocate
For Respondent/State	: Mr. Neeraj Sharma, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

27/07/2017

Heard.

1. This petition under Article 226 of the Constitution of India has been brought seeking relief for issuance of directions to release the petitioner on leave in accordance with the provisions of C.G. Prisoner Leave Rules, 1989.
2. It is submitted by the counsel for petitioner that petitioner is convict for offence U/s. 147, 302/149 of I.P.C. and is under going sentence of life imprisonment in Central Jail, Bilaspur since July, 2012. After the

requisite period of detention on the basis of entitlement under C.G. Prisoner's Leave Rules, 1989, petitioner preferred an application for grant of leave to respondent No.4, District Magistrate, Mungeli. Respondent No.4 called for the opinion and recommendations of Superintendent of Police Mungeli, who reported that family members of the victim have expressed that they feel danger if the prisoner is released on leave and hence objected to his release. On the basis of opinion given by the Superintendent of Police, respondent No.4 has rejected the application of the petitioner. It is submitted that respondent No.4 has made no application of mind in passing the order under the provisions of C.G. Prisoner's Leave Rules, 1989, wherein it is essential for him to give a finding recording his satisfaction whether the release of the petitioner is detriment to public interest or is fraught with danger to public safety. Hence, the order passed is arbitrary and casual, hence this petition.

3. Counsel for the State has submitted that if this petition is disposed of with suitable directions then he has nothing to oppose.
4. Perused all the documents and the material placed on record. The report of Superintendent of Police, District – Mungeli dated 28.03.2017 (Annexure P/1) states that family members of the victim have expressed that they feel insecure, if the, prisoner is released on leave and hence objected to his release. Annexure P/2 is the order dated 07.04.2017 by respondent No.4, in which, the report of Superintendent of Police is accepted as it is and without adding any comment on the report, the application has been rejected.
5. The requirement for consideration of application for leave, the Rules of 1989, have not been complied with. It appears on perusal of the order

of respondent No.4 dated 07.04.2017, there is no finding recorded that the release of prisoner would be detrimental to public interest or would be detrimental for the public safety. The report of Superintendent of Police is based on just conjecture and surmises.

6. This Court has clearly laid down in the order dated 18.11.2016 passed in WP(Cr) No.29 of 2016 Rakesh Shende Vs. State of Chhattisgarh that an application for leave by a prisoner, should not be decided in casual and perfunctory manner and, further, directions have also been issued which have to be complied with before disposing the application of leave. Therefore, considering all these facts, it seems appropriate to dispose of this petition, at the motion stage. Hence, this petition is allowed. The order dated 07.04.2017 passed by respondent No.4, is set aside.
7. Respondents are directed to reconsider the application of petitioner in the light of direction, issued in the WP(Cr.) No.192 of 2017 and also in compliance with the direction, issued in Rakesh Shendre (supra) case.
8. Learned counsel for the petitioner has placed reliance on the order passed by the Coordinate Bench of this Court dated 17.08.2015, passed in W.P.(Cr.) No.207/2014 (Virendra Kumar Sinha Vs. State of Chhattisgarh), in which after coming to conclusion that the District Magistrate has passed the order arbitrarily in contravention for the provision of Rule 6 of Prisoner Leave Rule, 1989 the order was set aside and the District Magistrate was directed to issue necessary release orders granting leave to the petitioner for the period applied for within 15 days from the date of receipt of the order. It is submitted that despite the orders passed by this Court, respondents acted mechanically in considering and deciding the leave application of

prisoner. Hence, a specific direction be made in this respect in the interest of justice.

9. Considering the submission made, without any interference into the authority of the District Magistrate(respondent No.4), it is directed that if, there are no ground to specifically withhold, then order be passed by respondent No.4 for grant of leave to the petitioner for the period of leave preferably within 15 days from the date of receipt of this order.
10. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge