

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(Cr) No. 211 of 2017

- Deepak Kumar S/o Chhote Lal, Aged About 21 Years R/o Village & Post Kodatarai, Police Station Jutemill, Tahsil & District Raigarh (Chhattisgarh), Presently In Central Jail Durg, Throgh Savita Sahu W/o Chhote Lal Sahu, Aged About 40 Years, R/o Kodatarai Chowk, Jute Mill, Raigarh, District Raigarh (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Home Department, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. The Jail Correctional Service Chhattisgarh, Director General (Prisoners) Jail Road Raipur,
3. The Jail Superintendent Central Jail Bilaspur, District Bilaspur (Chhattisgarh).
4. The District Collector, Raigarh, District Raigarh (Chhattisgarh).
5. The Superintendent Of Police, Raigarh, District Raigarh (Chhattisgarh).

---- Respondents

For Petitioner	:	Smt. Renu Kochar, Advocate.
For State/Respondent	:	Shri Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/07/2017

1. Heard.
2. By the judgment dated 25.3.2015 passed by the 1st Additional Sessions Judge, Raigarh in Sessions Trial No.24 of 2011, the petitioner stands convicted under Section 395 and 397/149 of Indian Penal Code (for short 'IPC') and sentenced to undergo R.I. for 10 and 5 years with fine of Rs.4,000/- with default stipulation. He is in jail since 22.5.2010 to 2.6.2010 and, thereafter, since the date of his conviction i.e. from 25.3.2015, he is in jail. Petitioner has filed an application for release on leave under Section 6 of MP/CG Prisoner Leave Rules, 1989 (for short 'the Rules of 1989'). The application was kept pending by respondent

No.4 because of which petitioner approached this Court vide WP(Cr) No.192/2017. This petition was disposed of on 23.6.2017 by this Court, with a direction to consider the application of petitioner in the light of judgment passed by this Court in Rakesh Shende Vs. State of Chhattisgarh in WP(Cr) No.29 of 2016 decided on 18.11.2016. But, petitioner's application for leave was decided by respondent No.4-District Magistrate, Raipur on 15.5.2017, earlier to the direction issued by this Court.

3. Learned counsel for the petitioner submits that the order of District Magistrate (respondent No.4) vide **Annexure P-6** dated 15.5.2017 has been passed in a very casual manner, as the Superintendent of Police did not recommend for release on leave of the petitioner, on possibility of breach of peace. The order passed is not in compliance of the direction given by this Court vide order dated 23.6.2017 and vide the order passed in Rakesh Shende (supra). Hence, suitable directions be issued.
4. Learned counsel for the State has opposed the petition and submits that the order dated 15.5.2017 was passed prior to the direction issued by this Court. Hence, the matter may be remanded back to the respondent No.4 to decide the matter afresh complying with the directions passed by this Court in WP(Cr) No.192/2017 by order dated 23.6.2017.
5. Learned State counsel has opposed the submission made on behalf of the petitioner.
6. 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 15.5.2017, 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.
7. This Court has clearly laid down in the order dated 18.11.2016 passed in WP(Cr) No.29 of 2017 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 15.5.2017 passed

by respondent No.4, is set aside.

8. 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.
9. Accordingly, the petition is stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha.