

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 213 of 2017

- Krishna Dhiwar S/o S/o Balaram Dhiwar Aged About 30 Years R/o Village, Banari, P.S. Janjgir, District Janjgir-Champa Chhattisgarh Through Indira Kumar Dhiwar, S/o Balaram Dhiwar, Aged About 33 Years, R/o Village Banari, P.S. Janjgir, District Janjgir-Champa 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 Raod Raipur, District- Raipur, Chhattisgarh
3. The Jail Superintendent Central Jail Bilaspur, District- Bilaspur, Chhattisgarh
4. The District Magistrate Janjgir, District Janjgir-Champa, Chhattisgarh
5. The Superintendent Of Police, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sunil Verma, Advocate.
For State/Respondent	:	Shri Neeraj Sharma, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/07/2017

1. Heard.
2. By the judgment dated 01.8.2012 passed by the Special Sessions Judge, Janjgir-Champa in Sessions Trial No.202 of 2011, the petitioner stands convicted under Section 302 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment with fine of Rs.2,000/- with default stipulation. He is in jail since 11.8.2011. 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') which has been rejected by the respondent No.4 vide order dated 06.12.2016. Petitioner has placed reliance on judgment passed by

this Court in Rakesh Shende Vs. State of Chhattisgarh in WP(Cr) No.29 of 2016 decided on 18.11.2016.

3. Learned counsel for the petitioner submits that the order of District Magistrate (respondent No.4) vide **Annexure P-1** dated 06.12.2016 has been passed only on the basis of report submitted by Superintendent of Police, Janjgir-Champa. Superintendent of Police Janjgir-Champa called a report from SHO, Janjgir-Champa, who reported that age of the petitioner is only 29 years and he has committed heinous offence of murder due to which temporary release on leave was not recommended. Superintendent of Police recommended as it is and the same has been accepted by respondent No.4 without giving any reason.
4. Learned counsel for the State submits that if the petition is disposed of with a suitable direction in that case State do not have any objection.
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 06.12.2016, 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 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 06.12.2016 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. Accordingly, the petition is stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE