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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 233 of 2017

Teekamchand Jain, S/o. Shri Dharamchand Jain, Aged About 35 Years, R/o. Village Kewati, Police Station -Bhanupratappur, Tahsil Bhanupratappur, Civil And Revenue District -Uttar Bastar Kanker Chhattisgarh.

Through ; Smt. Anjali Jain, W/o. Shri Teekamchand Jain, Aged About 30 Years, R/o. Village Kewati, Police Station Bhanupratappur, Tahsil Bhanupratappur, Civil And Revenue District Uttar Bastar Kanker 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 Jagdalpur, District Bastar Chhattisgarh.
4. The District Magistrate, Uttar Bastar Kanker, District Uttar Bastar Kanker Chhattisgarh.
5. The Superintendent Of Police Uttar Bastar Kanker, District Uttar Bastar Kanker Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Sunil Pillai, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/07/2017

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

and under going life imprisonment in Central Jail, Jagdalpur since January, 2013.

3. 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, which was forwarded and recommended by Jail Authorities. Respondent No. 4 in a very cursory and causal manner, decided the application and rejected it. Petitioner approached this Court by filing Writ Petition (Cr.)No.191 of 2016, which has been decided on 25.11.2016 by setting-aside the order of the District Magistrate and directed him to decide the application of the petitioner afresh keeping in view the provision of Rules 6 of Leave Rules 1989. It is further submitted that consequent to this order, respondent No.4 again sought report from Superintendent of Police, who in turn sought report of Station House Officer of concerned Police Station and has mechanically reported that if prisoner is granted leave that may result in breach of peace or in his abscondence. Respondent No.4 without application of mind on the basis of this report has again rejected the application of the petitioner.
4. It is submitted by the Counsel for the petitioner that looking to the approach taken by respondent No.4, it appears that respondent No.4 is sitting with a mindset to decide and reject the application of the petitioner without following the established principles and the directions of this Court in letter and spirit. Hence suitable order may be passed.
5. Counsel for the State has submitted that if this petition is disposed of with suitable directions then he has nothing to oppose.
6. The report by Superintendent of Police, Uttar Bastar Kanker, states that in case prisoner is released on leave, there is possibility of breach

of peace and also there is possibility of his absconding, which has been mentioned in toto in the order passed by the respondent No.4 (Annexure P/4). This clearly shows that no application of mind has been made by respondent No.4 in accordance with the Rules 6 of the C.G. Prisoners Rules, 1989.

7. 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 03.02.2017, 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.
8. 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 23.01.2017 passed by respondent No.4, is set aside.
9. 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.
10. 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.

11. 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.
12. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge