

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (Cr.) No. 202 of 2016**

Jageshwar Sahu, S/o Chintaram Sahu, aged about 40 years,
R/o. Village Newari, P.S. Suhela, Distt. Balodabazzar, Bhatapara
(C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Principle Secretary,
Department of Home (Jail), Mantralaya, Raipur, Distt. Raipur
(C.G.)
2. The District Magistrate, Raipur Civil and Revenue, District Raipur
(C.G.)
3. The Jail Superintendent, Central Jail, Raipur, Distt. Raipur (C.G.)
4. Addl. District Collector, Balodabazzar, Bhatapara, Distt.
Balodabazzar, Bhatapara (C.G.)
5. The Superintendent of Police, Balodabazar Bhatapara, Distt.
Balodabazzar, Bhatapara (C.G.)

---- Respondents

For Petitioner :Mr. Arvind Kumar Dubey, Advocate
For Respondents/State :Mr. Aditya Sharma, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/04/2017**

- (1) Heard on I.A. No.1, application for urgent hearing.
- (2) On due consideration, the application is allowed.
- (3) With the consent of the parties, the matter is heard finally.
- (4) Petitioner's application for grant of temporary leave under the
Chhattisgarh Prisoner Leave Rule, 1989 has been rejected by the
impugned order holding that his release from the jail is not proper.
- (5) Learned counsel appearing for the petitioner would submit that
the petitioner's application has not been considered in its proper

perspective and without giving any sufficient reason the same has been rejected, which is *per se* illegal and not in accordance with law in view of the decision rendered by this Court in W.P. (Cr.) No.29 of 2016 (Rakesh Shende Vs. State of Chhattisgarh & others).

(6) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(6) This Court in case of **Rakesh Shende Vs. State of Chhattisgarh & others**¹ has held in paragraph 21, 22 & 24 as under:-

“21.It is important to mention that power to grant parole is a purely administrative decision, however, the person who has been entrusted to grant leave (parole) is the District Magistrate in the instant case. The executive must exercise the discretion vested in it judiciously and not arbitrarily and keeping in mind the objectives of parole and also taking into consideration that regardless of the crime a man may commit, he still is a human being and has human feelings, particularly keeping the object of parole as highlighted by the Supreme Court in **Inder Singh** (supra) and keeping in view that the nature and length of sentence or magnitude of the crime committed by the prisoners may not be relevant for the purpose of grant of parole and further keeping in view that parole was introduced to encourage responsible behaviour in rehabilitating the prisoners and at the same time to provide them an opportunity to reform themselves into a better human being and also to provide them with an opportunity to maintain their social ties and allow the prisoners to develop a positive attitude, self-confidence and interest in life.

22.As noticed herein-above, the power of parole has been conferred by the rules to the District Magistrate and the post of District Magistrate is manned in the State of Chhattisgarh by a member of Indian Administrative Service. Therefore, the District Magistrate is required to exercise the power to consider the application for grant of parole. He has to take into consideration the object and need to grant parole to the convicted prisoners by applying their mind and come to a conclusion judiciously. The order passed by the District Magistrate in the instant case would show the complete non-application of mind, as by a cyclostyle order only name and number of prisoner has been inserted and it has been signed by the Additional District Magistrate. The manner in which the order has been passed by the District Magistrate in a mechanical manner is suggestive of betrayal of the confidence which the rule making authority reposed in the District Magistrate in conferring upon him to exercise the power to grant parole.

1 Decided on 18.11.2016 in W.P. (Cr.) No.29/2016

24.To say the least, what has been done is without due application of mind and it nowhere reflects that the concept of parole, which is based on "Karuna" (compassion), was there in the mind of the District Magistrate while exercising the power, particularly it has not been shown that the convict has any criminal antecedents or he is a hardened criminal and is likely to abscond if he is released on parole or is likely to involve in similar nature of offence. Though the petitioner convict is not the only son, but his mother's age is 50 years. Not only this, no such proper enquiry has been made by the District Magistrate to find out whether release of the petitioner is detriment to public interest. Even no finding has been recorded by the District Magistrate that release of the petitioner is detriment 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."

(7) In view of above legal position, this Court is of the considered opinion that the order passed by the Additional District Magistrate, Baloda Bazar- Bhatapara (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 and observation indicated hereinabove within forty five days from the date of production of a copy of this order.

(8) The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-