

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 304 of 2017**

Gitaram Sahu S/o Shri Meghram Sahu, Aged About 34 Years R/o
Bhathalikhurd Dilwwapara, Post Samarsal, Police Station
Jarhagaon, District Mungeli Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Jail Department,
Mahanadi Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. The Director General Of Prisons And Correntional Sevices
Chhattisgarh, Head Quarter Prisons And Correntional Sevices
Raipur, Chhattisgarh,
3. The Collector- Cum- District Magistrate Mungeli District Mungeli
(Chhattisgarh)
4. The Additional Collector Cum Additional District Magistrate
Mungeli District Mungeli (Chhattisgarh)
5. The Superintendent Of Police, Mungeli District Mungeli
(Chhattisgarh)
6. The Jail Superintendent, Mungeli District Mungeli (Chhattisgarh)
7. Station House Officer, Police Station Jarhagaon, Mungeli District
Mungeli (Chhattisgarh)

---- Respondents

For the Petitioner : Shri R.R. Soni, Advocate.

For the Respondents/ State : Shri Ashish Shukla, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25.08.2017

Heard.

1. The petitioner has filed this petition under Article 226 of the Constitution of India seeking issuance of a direction to the respondents authorities to release the petitioner on leave in accordance with the provisions of the C.G. Prisoner Leave Rules, 1989 (for short 'the Rules, 1989').
2. It is submitted that the petitioner, a convict, is undergoing sentence of life imprisonment in Central Jail, Bilaspur, since 20.09.2011. On the basis of his eligibility to be released on leave under the Rules, 1989, the petitioner moved an application before respondent No.4 – Additional Collector-cum-Additional District Magistrate, which has been rejected arbitrarily and mechanically. Hence, this petition.
3. 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 the Rules, 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 this 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.

4. Learned counsel for the State submits that if the petition is disposed off with certain directions then the State has nothing to oppose.
5. Heard learned counsel for the parties and perused the impugned orders.
6. On perusal of order of respondent No.4 dated 24.04.2017 (Annexure P-1), it appears that the Superintendent of Police, Mungeli did not recommend release of the petitioner on leave on the ground that if he is released on leave there is possibility of breach of peace. However, this Court feels that the application of the petitioner could not have been rejected simply on the aforesaid ground.
7. Rule 6 of the Rules, 1989 specifically provides that in case the District Magistrate is not of the view to release the prisoner on leave, he has to record satisfaction that such release would be detrimental in the public interest and would also be a threat and

danger to the public safety. Hence, these are only grounds on which application for release on leave can be rejected and in this respect any opinion expressed by any officer or by the police cannot be acted upon and therefore, it appears that the order has been passed arbitrarily.

8. This Court while dealing almost identical issue in WPCR No.29/2016, parties being Rakesh Shende v. State of CG, has held in categorical terms vide order dated 18.11.2016 that an application for leave by a prisoner, should not be decided in casual and perfunctory manner and, further, directions have also been issued to be complied with before disposing of the application for release on leave.
9. In the instant case, it appears that petitioner has never been released on leave though he has become entitled to be released as per provisions of Rule 6 of the Rules, 1989. As observed, the grounds mentioned in the order passed by the respondent No.4, there appears to be mindset which is being followed by the respondent No.4 without giving consideration to the principles laid down in the rules provided in this respect.
10. For the foregoing reasons, this petition is allowed. The order dated 24.04.2017 passed by respondent No.4 is set-aside.

Respondent No.4 is directed to consider and grant leave in favour of the petitioner for the period applied for in accordance with law. It is also directed that the orders will be passed by respondent No.4, as early as possible, preferably within a period of 15 days from the date of passing of this order.

Sd /-

(Rajendra Chandra Singh Samant)
Judge

Jamal