

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (Cr.) No. 241 of 2017**

Roshan @ Shipu S/o Jagdeesh Narayan Rathore, Aged About 23 Years R/o Village Saragaon, P. S. Saragaon, District Janjgir- Champa (Chhattisgarh), Through Rupendra Singh Rathore, S/o Jagdeesh Narayan Rathore, Aged About 26 Years, R/o Village Saragaon, P. S. Saragaon, 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 Road 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 the Petitioners	: Shri Sunil Pillai, Advocate.
For the Respondent/ State	: Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****26.07.2017**

1. Heard.
2. Learned counsel for the petitioner submits that the petitioner is in jail with regard to judgment of conviction and order of sentence of 10 years passed against him in a criminal case. On becoming entitled for leave under C.G. Prisoner Leave Rules, 1989, the petitioner preferred an application before respondents No.3 for grant of leave. The petitioner was orally informed by the Jail Authorities that his leave application has been rejected

by respondent No.4. On going through the copies of documents obtained from the office of the Collector, Janjgir-Champa, copy of opinion and report of the Superintendent of Police, Janjgir-Champa (Annexure-P/1), it is revealed that as per the report of P.S. Sargaon, if leave is granted to the petitioner/prisoner he may harm the witnesses and complainant or he may commit any heinous offence and he may also break leave. For these reasons, his release was not recommended. Learned counsel also submits that the report given by the President, Nagar Panchayat, Sargaon, which is a document in continuation of Annexure-P/1 mentions that if the petitioner/prisoner is released on leave and he comes to his village, then there is no apprehension of breach of peace and no objection is also expressed by the President of Nagar Panchayat, Sargaon. Although, there is no order of respondent No.4 submitted on record and it is the submission of the petitioner that he was orally informed under Rule 6 (b) of the M.P. & C.G. Leave Rules, 1989 (for short 'Rules, 1989'), which provides that if the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected. Hence, this provision permits oral communication of the decision made on the application for leave.

3. Learned counsel for the petitioner submits that the respondents have failed to comply with the provisions of Rule 6 of the Rules, 1989 and other rules as well. Reliance has been placed on the judgment of **Rakesh Shende Vs. State of Chhattisgarh** passed in WP(Cr) No.29 of 2016 dated 18.11.2016.

4. Learned State counsel opposed the arguments submitted by counsel for the petitioner.

5. Perused the record.

6. Annexure-P/1 is the report submitted by Superintendent of Police, Janjgir-Champa to respondent No.4 submitting that as per the report of P.S. Sargaon it is stated that if leave is granted to the petitioner/ prisoner he may harm the witnesses and complainant or he may commit any heinous offence and he may also break leave. Whereas, the report given by the President, Nagar Panchayat, Sargaon, which is a document in continuation of Annexure-P/1 mentions that if the petitioner/ prisoner is released on leave and he comes to his village, then there is no apprehension of breach of peace and no objection is also expressed by the President of Nagar Panchayat, Sargaon. As per the submission made by the petitioner, no written order was passed or no written communication was given by respondent No.4 to the petitioner and Rule 6(b) of the Rules, 1989 permit this course of action. Hence, looking to these facts and the submissions made, it appears that the application for leave made by the petitioner has been rejected merely on the report submitted by the Superintendent of Police, Janjgir-Champa which is based totally on the assumption of the S.H.O., P.S. Saragaon that the petitioner may abscond, may harm the witnesses, may commit any heinous offence and may break leave. A right which has accrued to a person cannot be refused in any perfunctory or mechanical manner.

7. This Court has clearly laid down in the aforesaid order passed in **Rakesh Shende** (supra) 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 of 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 23.05.2017 passed by respondent No.4, is set aside.

8. Respondents are directed to reconsider the application of the petitioner in the light of directions issued in the WP(Cr.) No.192 of 2017 and also in compliance with the direction issued in **Rakesh Shende** (supra) case.

9. Learned counsel for the petitioner has placed reliance on the order passed by this Court in **Virendra Kumar Sinha Vs. State of Chhattisgarh** in **WPCR No.207 of 2014** in which after coming to conclusion that the District Magistrate has passed the order arbitrarily in contravention of 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.

10. 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 grounds to specifically withhold, then order be passed by

respondent No.4 for grant of leave to the petitioner, preferably within 15 days from the date of receipt of a copy of this order.

11. Accordingly, the petition stands disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi