

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 395 of 2017

- Jivardhan Sahu S/o Shri Thabiro Sahu Aged About 30 Years R/o Village Gerra
Tahsil Saraipali District Mahasamund Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Home (Police) Department
Mantralaya Mahanadi Bhawan New Raipur Chhattisgarh.
2. The District Magistrate, Mahasamund District Mahasamund Chhattisgarh.
3. The Superintendent Of Police, Mahasamund District Mahasamund
Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Gurudev I. Sharan, Advocate.
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For Respondents/State	:	Shri Ashish Shukla, Govt. Advocate.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/10/2017

Heard.

1. Petition under Article 226 of Constitution of India has been brought by the petitioner with a prayer for issuance of direction.
2. It is submitted by learned counsel for petitioner that prisoner is undergoing sentence of life imprisonment in connection with his conviction by a criminal Court. He is in jail since 7.4.2011. After two years of continuous imprisonment, the petitioner became entitled for benefit of leave under C.G. Prisoner Leave Rules, 1989. Petitioner preferred an application for grant of leave for the first time which was recommended by the jail authorities. His application for leave under Rule 6 of MP/CG Prisoner Leave Rules, 1989 (for short 'the Rules of 1989') has been cursorily and arbitrarily rejected by the respondent No.2

vide order dated 4.9.2017. It is submitted that the order has been passed in a mechanical and casual manner, which is contrary to the provision under Rule 6 of the Rules of 1989. Hence this petition.

3. Learned counsel for the petitioner has opposed the petition and submits that if the petition is disposed of with a suitable direction in that case State do not have any objection.
4. Heard both the parties and perused the material on record.
5. The impugned order **Annexure P-1** dated 4.9.2017 mentions that the family members of victim have objection to release the prisoner on leave, the offences committed are of grievous in nature and that the SHO of Police-Station-Saraipali has opined that prisoner should not be released on leave unless these are some special and cogent reasons for has released and has also opined that release of prisoner may have consequences by way of commission of some other offences.
6. 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.2 dated 4.9.2017, 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.
7. 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 4.9.2017 passed by respondent No.2, is set aside.
8. 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.

9. Considering the submission made, without any interference into the authority of the District Magistrate(respondent No.2), it is directed that if, there are no ground to specifically with hold, then order be passed by respondent No.2 for grant of leave to the prisoner-Dharmraj for the period of leave preferably within 15 days from the date of receipt of this order.

10. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha