

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 375 of 2016**

Premal Banjare S/o Deendayal Banjare, Aged About 58 Years R/o Village Kareli, Police Station Bori, District Durg (Chhattisgarh) (Prisoner No. 3978/19, Central Jail Durg), Through: His Wife Smt. Shanti Bai, W/o Premal Banjare, Aged About 56 Years, R/o Village Kareli, Police Station Bori, District Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: The Secretary, Department Of Home, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. District Magistrate, District Durg, (Chhattisgarh)
3. Deputy Collector (Statistical Branch Collectorate), Durg, District Durg, (Chhattisgarh)
4. Superintendent Of Police, Durg, District Durg, (Chhattisgarh)
5. Superintendent Jail, Central Jail, Durg, District Durg (Chhattisgarh)
6. Station House Officer, Bori, District Durg, (Chhattisgarh)

---- Respondents

For the Petitioner	:	Shri Rajnish Singh Baghel, Advocate.
For the Respondent/State	:	Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****06.07.2017**

1. Heard on admission.
2. Admit.
3. This petition is disposed of at the motion stage.
4. This Writ Petition under Article 226 of the Constitution of India has been filed seeking quashing of the impugned order dated 31.8.2016 (Annexure – P/1) passed by respondent No.3 – Deputy Collector (Statistical Branch Collectorate), Durg, District Durg, Chhattisgarh rejecting the

application of the petitioner (convicted) for his release under the provisions of M.P. & C.G. Prisoner's Leave Rules, 1989 (for short 'Rules, 1989).

5. Learned counsel for the petitioner submits that the petitioner stands convicted under Sections 450 and 302 read with Section 34 of the Indian Penal Code and sentenced to undergo imprisonment for life. Now, he is in Central Jail, Durg. He filed an application for release on temporary leave, which is provided in Rules, 1989. His prayer was rejected by respondent No.2 – District Magistrate, District Durg, Chhattisgarh on the basis of the report submitted by the Superintendent of Police, Durg in which it is stated that the Sarpanch of Gram Panchayat Kareli, Thana Bori, District Durg has given no objection for release of the prisoner (the petitioner) but the family members of the victim have stated that they feel some danger in case the petitioner is released on temporary leave. It is also stated that the Station House Officer of the concerned police station has expressed concern that if the petitioner is released on temporary leave some untoward incident may occur for which the temporary release of the petitioner was not recommended.

6. Taking into consideration the aforesaid facts, respondent No.2 has rejected the prayer of the petitioner. It is also submitted that the order of respondent No.2 is not in accordance with the Rules, 1989. There is no provision in the rules to seek opinion of the family members of the victim and further there is no clear finding of respondent No.2 that the release of the petitioner shall be detrimental to the public interest. Reliance has been placed on the judgment of this court in Writ Petition (Cr.) No. 29 of 2016 (**Rakesh Shende vs. State of Chhattisgarh and Others**).

7. Rule 6 of the M.P. & C.G. Prisoner's Leave Rules, 1989 provides that on receipt of an application for temporary release by a prisoner, the District Magistrate shall make an enquiry and if he is satisfied that the request for grant of leave can be granted without detriment to public interest, he shall order accordingly. This rule also authorizes the District Magistrate to consult the District Superintendent of Police on the advisability of granting the leave and the Superintendent of Police shall also obtain the opinion of the Gram Panchayat of the village, where the prisoner resided before the conviction. The prayer for leave shall be refused only in case the District Magistrate opines that such release is fraught with danger to the public safety.

8. In the instant case, the Gram Panchayat concerned has given no such statement as is stated in the report of the Superintendent of Police, District Durg. The only ground shown is that the SHO of the concerned police station has stated that there is possibility of occurrence of some untoward incident and that the family members of the victim feel that there is danger if the petitioner is released temporarily on leave. The order of respondent No.2 dated 31.8.2016 (Annexure – P/1) simply states that the temporary release of the prisoner has not been recommended by the SHO of the concerned police station and the Superintendent of police, District Durg and agreeing with the said recommendation, the respondent No.2 has rejected the prayer of the petitioner. There is no finding given by respondent No.2 in accordance with the requirement under Rule 6 of the Rules, 1989 where it is required from the District Magistrate to express his opinion that the grant of leave shall be detrimental in public interest and the release of such prisoner is fraught with danger to the public safety. The opinion submitted by the

SHO of the concerned police station, the Superintendent of Police of District Durg and the family members of the victim are without any basis. Relying on the judgment passed in Writ Petition (Cr.) No. 29 of 2016, this petition is allowed. In the result, the order passed by respondent No.2 (Annexure – P/1) is quashed in the exercise of jurisdiction under Article 226 of the Constitution of India. It is directed that the respondent shall consider the case of the petitioner strictly in light of Rule 6 of the Rules, 1989 and thereafter pass a suitable order.

9. In view of above, this petition stands disposed of at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge