

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 32 of 2017**

Bela Bai W/o Dhanush Mahipal, Aged About 41 Years R/o Adarshnagar,
Bavapara, Utai, Police Station Utai, District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)
2. The Jail Correctional Service, Chhattisgarh Director General (Prisoners), Jail Road Raipur, District Raipur (Chhattisgarh)
3. The Jail Superintendent, Central Jail, Durg, District Durg (Chhattisgarh)
4. The District Collector, Durg, District Durg, (Chhattisgarh)
5. The Superintendent Of Police, Durg, District Durg, (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. B.P. Singh, Advocate
For State	:	Mr. Prasoon Bhaduri, Government Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****21/03/2017**

Heard

1. The petitioner, who is in prison, has filed this petition, aggrieved by order dated 18.10.2016 by which, petitioner's application for grant of leave of 10 days only was rejected.
2. Learned counsel for the petitioner submits that despite there being No Objection given by the concerned Gram Panchayat, Corporator and there being no Objection from any corner and without there being any material to come to the satisfaction that grant of leave to the applicant is fraught with danger to the public

safety, the application has been rejected. It is submitted that the applicant is a lady and there is no material to show that if she is released, she makes cause danger to the public safety. It is submitted that the provision for grant of leave as provided under Rule 6 of the M.P./C.G. Prisoner Leave Rules, 1989 (for short “the Rules of 1989”) has to be considered within the four corners of the said provision and no other considerations are relevant except those stated in the provision. He submits that there is nothing adverse to the applicant yet the application has been rejected because the superintendent of police in his report dated 03.10.2016 has merely raised an apprehension of the applicant absconding, which has no basis.

3. On the other hand, learned State counsel submits that the reason operative for rejecting the application is what was stated by the Superintendent of Police. He submits that the applicant is a life convict. Even though, she is a lady, as she is life convict, she is likely to abscond. According to him, it could be one of the relevant consideration. In his submission, what has been provided in Rule 6 of the Rules of 1989 as considerations for use of discretion is not exhaustive and there may be other circumstances warranting rejection of application for grant of leave by the convict.

4. The ambit and scope of provision contained in Rule 6 of the Rules of 1989 was considered by this Court in the case of **Virendra Kumar Sinha V. State of Chhattisgarh in WPCR No.207 of 2014 decided on 17.08.2015** in which, this Court after examination of the relevant statutory scheme recorded as below :

“5. A fair and logical interpretation of the provision would show that the application may be allowed and leave may be granted where the District Magistrate satisfied that grant of such leave would not be detrimental to the public interest. The note appended to the Rule 6 clearly shows that the Superintendent of Police should obtain the opinion of the Gram Panchayat of the village, where the prisoner resided before conviction and send to the District Magistrate along with his report.”

5. The provision contained in Rule 6 of the Rules of 1989, and the note appended to it clearly mentions that the District Magistrate should use his discretion and should refuse to grant leave only in cases in which he is satisfied that the release is fraught with danger to the public safety and secondly, it should be demanded only when it is really necessary. Moreover, it has also been stated

therein that if the prisoner intends to visit another district, where his near relatives reside, the concerning District Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave. Further, 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. Therefore, conjoint reading of the aforesaid provision leads to the conclusion that in the matter of grant of leave to a prisoner who is undergoing sentence for commission of an offence, the primary consideration is that the Magistrate should be satisfied that release is fraught with danger to the public safety and that it should be given only when it is really necessary.

6. However, from the report of the Superintendent of Police and the order passed by the District Magistrate, I find that both these relevant considerations have not found any place. The Superintendent of Police and District Magistrate both have opined against release on the ground that the petitioner is likely to abscond for which, there does not appear to be any material. The applicant is only a lady and the ground on which, she wanted 10 days leave was to meet with her family members. Therefore, this ought to be given due consideration after application of mind to the relevant statutory provision rather than anything else. The impugned order is, therefore, set aside. The District Magistrate is directed to consider the application for grant of leave in its proper prospective considering that the petitioner is a lady and need for such a short term leave sought by the petitioner by taking into consideration the relevant provision, recommendation made by the Gram Panchayat and the corporator. The decision shall be taken by the District Magistrate within an outer limit of 30 days from the date of receipt of copy of this order.

7. In addition, a copy of this order shall also be placed before the concerned Jail Superintendent

8. Accordingly, the petition is allowed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E