

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 65 of 2017

- Aneshwar S/o Sri Naresh Kumar Lodhi, Aged About 30 Years R/o Village Fattepur, Post Singarpur, Police Station Khairagarh, Civil & Revenue District Rajnandgaon (Chhattisgarh) Through: Mannu Sudan Sahu, S/o Shri Sudan Sahu, Aged About 47 Years, R/o Village Fattepur, Post Singarpur, Police Station Khairagarh, Civil & Revenue District Rajnandgaon, (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 Durg, District Durg, (Chhattisgarh)
4. The District Magistrate, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)
5. The Superintendent Of Police, Rajnandgaon, District Rajnandgaon, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Sunil Pillai, Advocate.
For State/Respondent	:	Shri Neeraj Sharma, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/07/2017

Heard.

1. Petition under Article 226 of Constitution of India has been brought by the petitioner seeking issuance of direction to the respondents for grant of leave under the provisions of M.P./C.G. Prisoner Leave Rules, 1989 (for short 'the Rules of 1989').
2. Petitioner stands convicted under Sections 302 & 201/34 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment in Central Jail, Durg. He is in jail since 6 years and has never been released on leave. After two years of continuous imprisonment, the petitioner became entitled for benefit of leave under the Rules of 1989. Petitioner preferred an application under Rule

6 of the Rules of 1989 for grant of leave for the first time on 8.4.2015 which was recommended by the jail authorities also. However, the respondent No.4-District Magistrate rejected this application vide order dated 17.08.2015 in an arbitrary, mechanical and casual manner which is contrary to the provisions contained under Rule 6 of the Rules of 1989. Petitioner approached this Court by filing writ petition bearing W.P.(Cr.) No.43 of 2016 which was allowed vide order dated 14.12.2016, the order of respondent No.4 dated 17.8.2015 has been quashed and the respondents were directed to pass order afresh within 15 days. Subsequent to that, the impugned order dated 11.1.2017 has been passed by respondent No.4 again rejecting the application of the petitioner for grant of leave.

3. It is submitted by the counsel for petitioner that respondent No.4 has not considered the application of petitioner as per the provision contained in Rule 6 of the Rules of 1989. Respondent No.4 has simply relied upon the opinion expressed by the Superintendent of Police, Rajnandgaon while passing the first order dated 17.8.2015 that there is possibility of breach of peace, hence, the release of the petitioner on leave was not recommended in the order dated 11.1.2017 passed subsequent to the order of this Court in WP(Cr.) No.43/2016 in which the opinion of the family members of victim, Sarpanch and Kotwar etc. has been taken into consideration, who have expressed that if the petitioner is released on leave he may again commit some offence. He submits that the same opinion has again been relied upon by respondent No.4 while passing the order 11.1.2017.
4. The requirement for consideration of application for leave the Rules of 1989, have not been complied with in the present case. It appears on perusal of the order of respondent No.4 dated 11.01.2017 that there is no finding to the effect that the release of prisoner would be detrimental to public interest or would be detrimental to the public safety. The report of Superintendent of Police is based only on conjectures and surmises.
5. This Court has clearly laid down in the order dated 18.11.2016 passed in W.P. (Cr.) No.29 of 2016 (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 been issued which have to be complied with before disposing off the application for grant of leave. Therefore, considering all these facts, it seems appropriate to dispose of this petition, at the motion stage itself. Accordingly, the petition is disposed off setting aside the

order dated 11.01.2017 passed by respondent No.4. The respondent concerned is directed to reconsider the application of petitioner for grant of leave in the light of directions issued in WP(Cr.) No.192 of 2017 and Rakesh Shende's case (supra) as well.

6. At this stage, learned counsel for the petitioner has placed reliance on the order passed by the coordinate Bench in **WPCR No.207/2014**, *parties being Virendra Kumar Sinha Vs. State of Chhattisgarh*, after coming to conclusion that the District Magistrate has passed the order arbitrarily in contravention of the provision of Rule 6 of the Rules of 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 may be issued in this respect in the interest of justice.
7. True it is that the order passed by respondent No.4 does not appear to have been passed after due consideration and application of mind under Rule 6 of Rules of 1989 which itself provides for each and every situation for imposing conditions if the prisoner is released on leave, the procedure for release on leave and also arrest of prisoner in case of breach of conditions imposed. The opinion of victim or other residents of locality expressing concern that the prisoner, having committed an offence, may again commit offence on being released on bail cannot be considered as a substantial ground for rejecting application. The grounds on which application can be rejected are enumerated in Rule 6 of the Rules of 1989 and the same have been mentioned above.
8. Considering the submission made, without any interference into the authority of respondent No.4- District Magistrate, it is directed that if, there is no ground to specifically withhold the petitioner, then respondent No.4 shall pass an order as early as possible, preferably within 15 days from the date of receipt of certified copy of this order, granting leave to the petitioner for the period to which he is entitled under the law.
9. With the aforesaid observations, the petition stands disposed off.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE