

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr) No.120 of 2017**

Lallu Sahu S/o Sri Deena Sahu, aged about 30 years, R/o Village Sipahi, Post Fastarpur, Police Station Mungeli, Civil & Revenue District Mungeli (CG) Through : Balluram Sahu, s/o Shri D.N. Sahu, aged about 19 years, R/o Village Sipahi, Post Fastarpur, Police Station – Mungeli Civil & Revenue District Mungeli (CG)

---Petitioner**Versus**

1. State of Chhattisgarh, Through: its Principal Secretary, Department of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (CG)
2. The Jail and Correctional Services Chhattisgarh, the Director General Prisons, Jail Road Raipur, District Raipur (CG)
3. The Jail Superintendent Central Jail Bilaspur, District Bilaspur (CG)
4. The District Magistrate Mungeli, District Mungeli (CG)
5. The Superintendent of Police Mungeli, District Mungeli (CG)

---Respondents

For Petitioner	:	Mr.Sunil Verma, Advocate
For State	:	Mr.Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**13/04/2017

Heard.

1. The petitioner's application for grant of leave has been rejected by respondent No.4 by order dated 20.12.2016 (Annexure P/2) on the ground that victim of the offence has made an objection on the petitioner's granting leave.

2. Learned counsel for the petitioner would submit that the matter is covered and the petitioner is entitled for leave as per decision of this Court in Writ Petition (Cr) No.29 of 2016 (Rakesh Shende vs. State of Chhattisgarh and others), decided on 18.11.2016.

3. In Rakesh Shende (supra) this Court held as under:-

“16. It is extremely pertinent to notice the sea difference between parole and bail. Parole is an administrative action and it is a temporary release whereas bail is suspension of sentence in case of conviction. A Constitution Bench of the Supreme Court in the matter of **Sunil Fulchand Shah v. Union of India and others**¹ has observed as under in paragraphs 24, 25 and 26: -

"24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word "bail" is surety. In *Halsbury's Laws of England*², the following observation succinctly brings out the effect of bail:

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.

25. "Parole", however, has a different connotation than bail even though the substantial legal effect of both bail

¹(2000) 3 SCC 409

²Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.

and parole may be the release of a person from detention or custody. The dictionary meaning of "parole" is:

The Concise Oxford Dictionary - (New Edition)

"The release of a prisoner temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behaviour; such a promise; a word of honour."

Black's Law Dictionary - (6th Edition)

"Release from jail, prison or other confinement after actually serving part of sentence; Conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order."

According to The Law Lexicon³, "parole" has been defined as:

"A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole."

According to Words and Phrases⁴:

" 'Parole' ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence. People ex rel Rainone v. Murphy⁵.

'Parole' does not vacate sentence imposed, but is merely a conditional suspension of sentence. Wooden v. Goheen⁶.

A 'parole' is not a 'suspension of sentence', but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the court. Jenkins v. Madigan⁷.

A 'parole' does not suspend or curtail the

3 P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words & Phrases, p. 1410

4 Words & Phrases (Permanent Edition), Vol. 31, pp. 164, 166, 167, West Publishing Co.

5 135 NE 2d 567, 571, 1 NY 2d 367, 153 NYS 2d 21, 26

6 Ky, 255 SW 2d 1000, 1002

7 CA Ind, 211 F 2d 904, 906

sentence originally imposed by the court as contrasted with a 'commutation of sentence' which actually modifies it."

26. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking, an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of this Court in [State of Haryana v. Mohinder Singh](#)⁸ to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction."

17. Very recently, in the matter of [State of Gujarat and another v. Lal Singh alias Manjit Singh and others](#)⁹, the Supreme Court has reiterated the law laid down in [Sunil Fulchand Shah](#) (supra) and has delineated the scope of jurisdiction while granting temporary parole as under: -

"33. So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In [Sunil Fulchand Shah v. Union of India](#) (supra) the Constitution Bench while dealing with the grant of temporary release or parole under Sections 12(1) and Section 12(1-A) of the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the

8 (2000) 3 SCC 394 : JT (2000) 1 SC 629

9(2016) 8 SCC 370

Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu."

18. Aforesaid enunciation of law would bring me back to the facts of the present case to be considered as to whether the learned District Magistrate is justified in rejecting the application for parole.

19. It is well settled law that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the Constitution of India. It is also well settled that grant of parole being essentially an executive function, it is for the Government to consider the request made by the convict for the purpose and to pass an appropriate order on it. If, however, the order passed by the Government declining parole is based upon irrelevant ground or extraneous consideration or is otherwise wholly unsustainable being an order which no reasonable person could in the facts and circumstances of case have passed or is totally perverse, it is open to the court to exercise its power under Article 226 of the Constitution of India to set aside the order and direct the release of a convict on parole.

20. It appears from the record that on application filed by the petitioner before the District Magistrate, Raipur, the District Magistrate forwarded it to the Superintendent of Police and the Superintendent of Police, in turn, made enquiry through the Station House Officer who simply apart from other formalities submitted report on 4-3-2014 that the petitioner is not likely to lead peaceful life which was in turn, relied upon by the Superintendent of Police and ultimately, came to be relied upon by the District Magistrate and only on that basis the District Magistrate in a cyclostyle form only adding the name and other particulars of the petitioner, has passed the impugned order vide Annexure P-3 which states as under: -

उपरोक्त विषयांतर्गत संदर्भित पत्र में पुलिस अधीक्षक, रायपुर से अभिमत प्राप्त गया। उन्होंने अपने पत्र क्रमांक/पुअ/डीपीओ/राय/02/14 दिनांक 08.05.2014 में बंदी क्रमांक 9826/125 नाम राकेश शेण्डे आत्मज अशोक कुमार शेण्डे थाना गुढियारी जिला रायपुर द्वारा शान्तमय, जीवन बिताने की संभावना नहीं है, अतः बंदी को अस्थायी मुक्ति पर छोड़ने की अनुशंसा नहीं जाती है, प्रतिवेदित किये हैं।

अतः बंदी का प्रकरण नस्तीबद्ध किया जाता है, तत्संबंध में बंदी को सूचित करें।

21. It is important to mention that power to grant parole is a purely administrative decision, however, the person who has been entrusted to grant leave (parole) is the District Magistrate in the instant case. The executive must exercise the discretion vested in it judiciously and not arbitrarily and keeping in mind the objectives of parole and also taking into consideration that regardless of the crime a man may commit, he still is a human being and has human feelings, particularly keeping the object of parole as highlighted by the Supreme Court in Inder Singh (supra) and keeping in view that the nature and length of sentence or magnitude of the crime committed by the prisoners may not be relevant for the purpose of grant of parole and further keeping in view that parole was introduced to encourage responsible behaviour in rehabilitating the prisoners and at the same time to provide them an opportunity to reform themselves into a better human being and also to provide them with an opportunity to maintain their social ties and allow the prisoners to develop a positive attitude, self-confidence and interest in life.

22. As noticed herein-above, the power of parole has been conferred by the rules to the District Magistrate and the post of District Magistrate is manned in the State of Chhattisgarh by a member of Indian Administrative Service. Therefore, the District Magistrate is required to exercise the power to consider the application for grant of parole. He has to take into consideration the object and need to grant parole to the convicted prisoners by applying their mind and come to a conclusion judiciously. The order passed by the District Magistrate in the instant case would show the complete non-application of mind, as by a cyclostyle order only name and number of prisoner has been inserted and it has been signed by the Additional District Magistrate. The manner in which the order has been passed by the District Magistrate in a mechanical manner is suggestive of betrayal of the confidence which the rule making authority reposed in the District Magistrate in conferring upon him to exercise the power to grant parole.

23. At this stage, it would be appropriate to notice the following binding observation made by the Supreme Court in the matter of Tarlochan Dev Sharma v. State of Punjab and others¹⁰: -

"16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at

the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. ..."

24. To say the least, what has been done is without due application of mind and it nowhere reflects that the concept of parole, which is based on "Karuna" (compassion), was there in the mind of the District Magistrate while exercising the power, particularly it has not been shown that the convict has any criminal antecedents or he is a hardened criminal and is likely to abscond if he is released on parole or is likely to involve in similar nature of offence. Though the petitioner convict is not the only son, but his mother's age is 50 years. Not only this, no such proper enquiry has been made by the District Magistrate to find out whether release of the petitioner is detriment to public interest. Even no finding has been recorded by the District Magistrate that release of the petitioner is detriment to public interest. Simply, in a very casual and perfunctory manner, such an application has been decided which is clearly impermissible in law and cannot be approved."

4. Consequently, I am of the considered opinion that the order dated 20.12.2016 (Annexure P/2) passed by respondent No.4/Additional Collector-cum-Additional District Magistrate, Mungeli deserves to be quashed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India and is accordingly quashed. It is directed that the respondents shall consider the case of the petitioner to grant him the privilege of release / parole, in accordance with law indicated herein-above within forty days from the date of production of a copy of this

order.

5. The writ petition is allowed to the extent indicated herein-above.

There shall be no order as to costs.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-