

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 247 of 2017

Hariram Sahu, S/o. Late Chintaram Sahu, Aged About 53 Years, R/o. Village Sakri, Police Station Palarai, District Balodabazar, Chhattisgarh.

Through Smt. Dropati Bai Sahu, W/o. Hariram Sahu, R/o Ward 15, Rawabhatha, Durga Chowk, Birgaon, M, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Its Principal Secretary, Department Of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya 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 Raipur, District Raipur, Chhattisgarh.
4. The District Magistrate, Balodabazar-Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh.
5. The Superintendent of Police, Balodabazar-Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Sunil Pillai, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

28/07/2017

Heard.

1. This petition under Article 226 of the Constitution of India has been brought seeking relief for issuance of directions to release the petitioner on leave in accordance with the provisions of C.G. Prisoner Leave Rules, 1989.
2. It is submitted by the counsel for petitioner that petitioner is convict for offence U/s. 302 of I.P.C. in S.T. No.253/86. He was convicted on 08.07.1989 and was in jail since the date of incident till his sentence

was suspended by this Court in the year 1991. The appeal before the High Court was decided in the year 2012, thereafter, he has been again placed in detention and under going the remaining jail sentence. In this manner he has in total passed about 9 years in detention.

3. After the requisite period of detention on the basis of entitlement under C.G. Prisoner's Leave Rules, 1989, petitioner preferred an application for grant of leave to respondent No.4, which was cursorily, casually and arbitrarily rejected by the order dated 07.10.2015 (Annexure P/2). A Writ Petition (Cr.) No.125/2016 was preferred and by order dated 07.04.2017, the petition was allowed by quashing the impugned order. The respondents were directed to reconsider the application for leave moved by petitioner under C.G. Prisoner's Leave Rules, 1989. Consequently, respondent No.4 has decided the application on 29.06.2017 and again rejected the application of petitioner in the same manner without any application of mind but on different ground.
4. It is submitted that respondent No.4 is sitting with mind set to dispose of the application of leave of the petitioner by way of rejection. This violating the direction of this Court and the principle laid down in this respect in case of Rakesh Shende Vs. State of C.G. & Ors, passed in W.P.(Cr.) No.29/2016 dated 18.11.2016, hence specific direction may be given to the respondents with respect to grant of leave to petitioner as per his entitlement.
5. Counsel for the State has submitted that if this petition is disposed of with suitable directions then he has nothing to oppose.
6. Heard the arguments and perused all the documents and the material placed on record.
7. First application of leave of the petitioner was rejected by order dated

07.10.2015 (Annexure P/2) mentioning the ground that, if the, prisoner is released on leave, he may abscond and the second order of the rejection (Annexure P/4) dated 29.06.2017 the grounds mentioned are these that there is possibility of breach of peace, hence the leave application is rejected.

8. 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.4 dated 29.06.2017, 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.
9. This Court has clearly laid down in the order dated 18.11.2016 passed in WP(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 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 29.06.2017 passed by respondent No.4, is set aside.
10. 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.
11. Learned counsel for the petitioner has placed reliance on the order passed by the Coordinate Bench of this Court dated 17.08.2015, passed in W.P.(Cr.) No.207/2014 (Virendra Kumar Sinha Vs. State of Chhattisgarh), in which after coming to conclusion that the District

Magistrate has passed the order arbitrarily in contravention for the provision of Rule 6 of Prisoner Leave Rule, 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 be made in this respect in the interest of justice.

12. In the circumstances of this case, it appears that petitioner has remained in jail almost 9 years and has never been released on leave though he has become entitled to be released as per provisions of Rule 6 of C.G. Prisoner's Leave Rules, 1989. As observed, the grounds mentioned in the orders passed by the respondent No.4, there appears to be mind set which is being followed by the respondent No.4 without giving consideration to the principle laid down in the rules provided in this respect. Hence for these reason, this petition is allowed. The respondent No.4 is directed to consider and grant leave in favour of the petitioner for the period applied for in accordance with law. It is also directed that orders may be passed by the respondent No.4 preferably within a period of 15 days.

13. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge