

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 271 of 2017**

Bikambar Kumhar S/o Shri Bhuvneshwar Kumhar, Aged About 27 Years R/o Village Binjkot (Kumhardipa), Post Binjkot (Kumhardipa), P. S. Bhupdevpur, District Raigarh (Chhattisgarh), Through Navin Rana, S/o Shri K. Rana, Aged About 28 Years, R/o Village Navbhatta, P. O. Bonda, P. S. Saria, District Raigarh (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 Bilaspur, District Bilaspur (Chhattisgarh).
4. The District Magistrate, Raigarh, District Raigarh (Chhattisgarh).
5. The Superintendent Of Police, Raigarh, District Raigarh (Chhattisgarh).

---- Respondents

For the Petitioner : Shri Sunil Verma , Advocate.

For the State/Respondents : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****09.08.2017**

Heard.

1. Petition under Article 226 of Constitution of India has been brought seeking relief for release of petitioner on leave/parole in accordance with the provisions of Chhattisgarh Prisoner's Leave Rules, 1989.
2. It is submitted by the counsel for petitioner that petitioner is a convict and is undergoing sentence in jail. It is submitted by the counsel for the

petitioner that petitioner is in jail since 15.01.2010. On attaining the entitlement of his release on leave, he preferred an application under Rule 6 of Chhattisgarh Prisoner's Leave Rules, 1989 before the respondent No.4. His application has been rejected showing the cause that if the petitioner is released in jail that may result in breach of peace. It is further submitted by counsel for the petitioner that the order passed by the respondent No.4 is not in accordance with the provisions of Rules 6 of Chhattisgarh Prisoner's Leave Rules, 1989, no satisfaction or finding has been recorded by the respondent No.4 in this respect that release of prisoner shall be detrimental to public interest or his release is not fraught with danger to public safety. Hence, without such reasoning, the dismissal of application is arbitrary and against the provisions of law. Hence, this petition.

3. Learned counsel for the State submits that if the petition is disposed off with suitable direction then he has nothing to oppose.
4. Heard the arguments and perused all the documents placed on record.
5. The application of leave presented by the petitioner has been rejected vide order dated 03.04.2017 (**Annexure –P1**), in which it is mentioned that Superintendent of Police, Raigarh, has stated in his report that if the prisoner is released on leave that may result in breach of peace. Hence, his release was not recommended. Respondent No.4 has simply agreed with the report of the Superintendent of Police and rejected the application of the petitioner.
6. 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 03.04.2017, 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.

7. 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 03.04.2017 passed by respondent No.4, is set aside.
8. 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.
9. 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.
10. 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.

11. Accordingly, the petition stands disposed of.

Sd /-
(Rajendra Chandra Singh Samant)
Judge