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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 278 of 2017

Jaisingh, S/o. Late Bhaktu Ram Bhagat, Aged About 50 Years, R/o. Village Jambahar, Police Station- Lailung, District- Raigarh, Chhattisgarh, Through Narsingh Bahagat, S/o. Late Shri Bhaktu Ram, Aged About 52 Years, R/o. Village Jambahar, P.S. Lailunga, District- Raigarh, (C. G.)

---- 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, Raigarh, District Raigarh, Chhattisgarh.
5. The Superintendent of Police, Raigarh, District Raigarh, Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Sunil Verma, Advocate
For Respondent/State	: Mr. Neeraj Sharma, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/08/2017

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 and is undergoing life imprisonment in Central Jail, Raipur. After the requisite period of detention and 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 02.05.2016 (Annexure P/1) simply agreeing with the opinion given by the Superintendent of Police, Raigarh. Hence this petition.

3. Counsel for the State has submitted that if this petition is disposed of with suitable directions then he has nothing to oppose.
4. Heard the arguments and perused all the documents and the material placed on record.
5. As submitted by the counsel for the petitioner, the petitioner is in jail since 04.06.2009 and this was the first application for release on leave made by him, which has been arbitrarily rejected by the respondent No.4. The order dated 02.05.2016 (Annexure P/1) mentions the reason that opinion has been given by the Superintendent of Police that, if the, prisoner is released on leave, some other incident may occur and there is possibility of breach of peace. Agreeing to this opinion, application of the petitioner has been rejected without giving any consideration to the no objection certificate given by the members of the gram panchayat - Jambahar.
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 02.05.2016, 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 02.05.2016 passed by respondent No.4, is set aside.

8. 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.
9. In the circumstances of this case, it appears that petitioner 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 order 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 order passed by respondent No.4 is set-

aside. 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.

10. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge