

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 310 of 2017

Maneesh @ Baala Soni S/o Shri Jagnarayan Soni, Aged About 30 Years R/o Tulsi Nagar, Post Korba, Police Station City Kotwali Korba, District Korba, Chhattisgarh. Through Ajit Singh Thakur, S/o Late R.K.S. Thakur, Aged About 28 Years, R/o Kalibadi, Sarkanda, Police Station Sarkanda, District Bilaspur, 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, Korba, District Korba, Chhattisgarh.
5. The Supeintendent Of Police, Korba, District Korba, Chhattisgarh.

---- Respondents

For the Petitioner : Shri Sunil Pillai, Advocate.
 For the Respondents/ State : Shri Neeraj Sharam,DGA Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

30.08.2017

Heard.

1. The petitioner has filed this petition under Article 226 of the Constitution of India seeking issuance of a direction to the respondents authorities to release the petitioner on leave in accordance with the provisions of the C.G. Prisoner Leave Rules, 1989 (for short 'the Rules, 1989').
2. It is submitted that the petitioner is a convict and is undergoing

sentence of life imprisonment in Central Jail, Bilaspur since, 2013. After passing more than two years in jail, on the basis of the entitlement, to be released on leave in provision of Rule 6 of the Rules, 1989. The petitioner moved an application before respondent No.4 District Magistrate, Korba and the same has been rejected vide Annexure P-1 dated 28.07.2017 arbitrarily and mechanically without following the Rules 6 of Rule 1989. Hence, this petition.

3. Learned counsel for the State submits that if the petition is disposed of with certain directions then the State has nothing to oppose.
4. Heard learned counsel for the parties and perused the impugned orders.
5. On perusal of order dated 28.07.2017 (Annexure P1), passed by respondent No.4, it appears that respondent No.4 has simply agreeing with the opinion given by the Superintendent of Police, Korba, that the petitioner is a convict of heinous offence and in case he is released on leave, possibility that he shall commit such offence again can not be denied.
6. Learned counsel for the petitioner submits that report of Superintendent of Police does not disclose that petitioner has criminal history and it has not been recorded by District Magistrate, that release of prisoner shall be detrimental to public interest or would be detrimental for the public safety.
7. 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 28.07.2017, 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.

8. 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 28.08.2017 passed by respondent No.4, is set aside.
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 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.

11. Accordingly, the petition stands disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

jamal/