

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 219 of 2016

Surendra, S/o. Vishnu Lodhi, Aged About 29 Years, Caste -Lodhi, R/o. Jeeratola, P.S. Gandai, Distirct- Rajnanadgaon, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through : The Secretary, Home Department (Jail) Department Mantralaya Mahndi Bhawan, New Raipur, Police Staiton- Rakhi, Distirct Raipur Chhattisgarh
2. The Jail Superintendent, Central Jail Durg, District -Durg, Chhattisgarh
3. The District Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh
4. The Superintendent of Police, Rajnandgaon, District Rajnandgaon Chhattisgarh.

-----Respondents

For Petitioner : Mr. Rajkumar Gupta, Advocate

For Respondent/State. : Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/07/2017

Heard.

1. This petition under Article 226 of the Constitution of India has been filed seeking relief for direction to the respondent to release the petitioner on leave as applied under M.P./C.G. Prisoner's Leave Rules, 1989.
2. Petitioner stands convicted under Section 302 of Indian Penal Code and sentenced to life imprisonment in S.T. No.50/2007, by the judgment dated 23.11.2007. Petitioner is in jail since 02.03.2007

and till date he has not been granted any leave under the M.P./C.G. Prisoner's Leave Rules, 1989. The petitioner applied for leave on 08.09.2015 for which he was eligible. His application for leave has been rejected by the respondent No.3, District Magistrate, Rajanndgaon vide memo dated 25.01.2016, hence this petition.

3. It is submitted by the counsel for the petitioner that no suitable enquiry was conducted by the District Magistrate before passing the order (Annexure P/1) and while passing this order only the report of the Superintendent of Police was relied on, no finding has been given that release of the prisoners on leave would be detrimental to the public interest or such release is fraught with danger to the public safety. Hence the order passed by the District Magistrate, respondent No.3 is arbitrary and against the fundamental right of the petitioner.
4. Counsel for the State opposed the grounds in petition and the arguments submitted in this behalf.
5. The petitioner filed an application for leave of 10 days under the M.P./C.G. Prisoner's Leave Rules, 1989. This application was forwarded and leave was recommended by the jail authorities. Respondent No.3, District Magistrate called for the report of the Superintendent of Police, District – Rajnandgaon, who has reported the District Magistrate, Rajnandgaon vide memo dated 05.11.2015 (Annexure R/2) that the petitioner who has been alleged for commission of brutal murder of child of four years age, his release may affect adversely and some untoward incident may occur and may result in breach of peace has been reported by Station House

Officer, Gandai and Sub-Divisional Officer Police, Gandai on the basis of which Superintendent of Police, Rajnandgaon gave negative report which has been simply relied upon and the order dated 25.01.2016 (Annexure P/1) has been passed. It is apparent from the perusal of the Annexure P/1 that the District Magistrate has not recorded any satisfaction that the release of the petitioner would be detrimental to the public interest or such release is fraught with danger to the public safety.

6. The opinion expressed by the Superintendent of Police, Rajnandgaon is not based on any material, like criminal history of the petitioner, or any other material against him. Petitioner has placed his reliance on the judgment of this Court, passed on 18.11.2016, in Writ Petition (Criminal) No.29/2016 (Rakesh Shende Vs. State of Chhattisgarh), in which concept of parole has been elaborately discussed on the basis of the law laid down by the Hon'ble Supreme Court in the various judgments and it was held that the application for release of prisoner under Rule 1989 should not be casual and in perfunctory manner and if any, order is passed in this manner then it would be impermissible under the law.
7. This is a case where it appears very clear, that the application of the petitioner has been decided in a very casual manner and requirements of Section 6 of the M.P./C.G. Prisoner's Leave Rules, 1989 has not been complied with in recording clear finding in this aspect that the release of the prisoner would be detrimental to the public interest or such release is fraught with danger to the public safety. Further the material relied on by passing such order is also

without any substance.

8. Hence it is a fit case to exercise the power under Article 226 of the Constitution of India. The petition is allowed. The impugned order (Annexure P/1) passed by the respondent No.3 is set-aside. It is directed that the respondents shall consider the application of the petitioner under the M.P./C.G. Prisoner's Leave Rules, 1989 afresh and decide the same in accordance with the law and rules laid down in this respect preferably within two months from the date of communication of this order.
9. The writ petition is allowed to the extent indicated herein-above. There shall be no order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram