

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 225 of 2016

- Yashwant Kumar S/o. Shri Badku Kalar, Aged About 45 Years R/o Madwa, P.S. Bilaigarh, Tahsil / District Raipur Now Baloda Bazar Bhatapara Chhattisgarh Presently Central Jail Raipur Chhattisgarh

---- Petitioner

Versus

1. The District Magistrate Baloda Bazzar Baloda Bazar Bhatapara Chhattisgarh
2. Central Jail, Through Jailor, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ritesh Verma, Advocate.
For Respondents/State	:	Shri Anil S. Pandey, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/09/2017

Heard.

1. Petition under Article 226 of Constitution of India has been brought by the petitioner with a prayer for issuance of direction.
2. Petitioner stands convicted under Section 302 and 376 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment. He is in jail after the judgment of conviction from 18.8.2011 since 7 years and 9 months. After two years of continuous imprisonment, the petitioner became entitled for benefit of leave under C.G. Prisoner Leave Rules, 1989. Petitioner preferred an application for grant of leave for the first time which was recommended by the jail authorities. His application for leave under Rule 6 of MP/CG Prisoner Leave Rules, 1989 (for short 'the Rules of 1989') has been cursorily and arbitrarily rejected by the respondent No.1 vide order dated 11.04.2017. It is submitted that the order has been passed in a mechanical and casual manner, which is

contrary to the provision under Rule 6 of the Rules of 1989.

3. Learned counsel for the petitioner has opposed the petition and submits that if the petition is disposed of with a suitable direction in that case State do not have any objection.
4. Perused the material on record the impugned order dated 11.04.2016 **Annexure P-1** by respondent No.1 mentioned that on receiving the application for leave from the petitioner an enquiry was conducted by Superintendent of Police, Balodabazar, he did not recommend for temporary release on leave of the petitioner, he may commit some serious offence. Superintendent of Police, Balodabazar also communicated to respondent No.1 about this non-recommendation. Solely on this basis, the application for temporary release of petitioner has been rejected by respondent No.1.
5. 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.1 dated 11.04.2016, 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.
6. This Court has clearly laid down in the order dated 18.11.2016 passed in WP(Cr) No.29 of 2017 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 11.04.2016 passed by respondent No.1, is set aside.
7. 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.
8. Learned counsel for the petitioner has placed reliance on the judgment passed by this Court in **Virendra Kumar Sinha Vs. State of**

Chhattisgarh reported in **WPCR No.207/2014** 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. Considering the submission made, without any interference into the authority of the District Magistrate(respondent No.1), it is directed that if, there are no ground to specifically with hold, then order be passed by respondent No.1 for grant of leave to the petitioner for the period of leave preferably within 15 days from the date of receipt of this order.

10. Accordingly, the petition stands disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE