

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 82 of 2016

Junaid Sheikh, S/o. Shri Mohammad Jalil Sheikh, Aged about 33 Years,
R/o. Ward No.23, Shardapara, Camp-2, Power House, Bhilai, P.S.
Chhawani, Civil & Revenue District Durg (C.G.)

Through : Mohammad Jalil Sheikh, S/o. Shri Mohammad Hasam, Aged
About 67 Years, R/o.Ward No.23, Shardapara, Camp-2, Power House,
Bhilai, P.S. Chhawani, Civil & Revenue District Durg (C.G.).

----Petitioner

Versus

1. State of Chhattisgarh, Through its Principal Secretary, Department of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (C.G.).
2. The Jail and Correctional Services Chhattisgarh, The Director General Prisons, Jail Road, Raipur, District – Raipur (C.G.).
3. The Jail Superintendent, Central Jail Durg, District – Durg (C.G.)
4. The District Magistrate, Durg, District Durg (C.G.).
5. The Superintendent of Police, Durg, District Durg (C.G.)

---- Respondents

For Petitioner : Mr. Sunil Pillai, Advocate

For State/Respondent : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17/01/2017

1. The present petition has been filed invoking the provisions of Article 226 of the Constitution of India seeking for a direction for the Respondents for releasing the petitioner on parole.
2. Counsel for the petitioner submits that it is a case where the petitioner who is in jail since 2010 made an application for grant of parole which was sent to the District Magistrate Durg with recommendation for grant of leave but the Superintendent of Police did not recommended it, as such, the same was refused. The

Station House Officer, Police Station Chhawani submitted the report and stated that in case the petitioner is released on parole there are every chances that dispute may occur with the family member of victim. Therefore, on that basis the release of petitioner on parole was opposed. The Superintendent of Police on the basis of said recommendation refused to accord permission for release of petitioner. Thereafter, the District Magistrate on the basis of said recommendation has refused to grant parole to the petitioner. Counsel for the petitioner further submits that it is a case where the order passed by the District Magistrate was without proper consideration of the rules governing the fields and it has been passed in a mechanical manner. Counsel for the petitioner relies upon the decision of this Bench rendered in Writ Petition (Cr.) No. 69 of 2016 wherein this Court had allowed a similar petition and ordered the concerned District Magistrate to pass a fresh order in the light of the rules applicable for the grant of parole.

3. Counsel for the State opposing the petition submits that taking into consideration the gravity of the offence committed by the petitioner and the fact that the Station House Officer, Chhawani and the Superintendent of Police have not recommended the case of the petitioner for grant of parole; consequently, the District Magistrate has rightly rejected the prayer of petitioner and which cannot be said to be bad in law or infirm in any manner.
4. Having considered the rival contentions put forth on behalf of either side what is relevant at this juncture is that the State Government has enacted specific rules in respect of grant of leave to the prisoners in exercise of its powers conferred upon it under the

provisions of the Prisoners Act, 1900. The said Rules in the State of Chhattisgarh are known as 'The Chhattisgarh Prisoner's Leave Rules, 1989'. Rule 4 of the Rules of 1989 deals with the conditions of leave. For ready reference the said clause is reproduced herein below :

“4. Conditions of Leave.– The prisoners shall be granted leave under sub-section (1) of Section 31-A of the Act on the following conditions, namely :–

- (a) He fulfills the conditions laid down in Section 31-A of the Act;
- (b) He has not committed any offences in jail between the date of application for leave and receipt of the order of such leave;
- (c) The releasing authority must be satisfied that the leave may be granted without detriment to the public interest;
- (d) He gives in writing to the Releasing Authority the place or places which he intends to visit during the period of his leave and undertake not to visit any other place during such period without obtaining prior permission of the Releasing Authority in that behalf; and
- (e) He should furnish security to the satisfaction of the Releasing Authority if such security is demanded by the Releasing Authority.”

5. Similarly, Rule 6 of the Rules of 1989 deals with the powers conferred upon the sanctioning authority while considering the application for grant of leave, which again for ready reference is reproduced below :

“6. Sanctioning Authority for first leave.– (a) If the District Magistrate, after making such enquiry as he may consider necessary, is satisfied that the request for grant of leave can be granted without detriment to public interest, he shall issue to the Superintendent a duly signed and sealed warrant in Form 'A' to the prisoner. The District Magistrate shall enter in the warrant the number of days that will be required for the journeys by the shortest practicable route to and from the place at which during his leave the prisoner proposes to reside or if he proposes to visit more than one place, the farthest place from the Jail

which he proposed to visit.

Note.— The District Magistrate is responsible for the proper carrying out of these instructions. He may of course, consult the District Superintendent of Police on the advisability of granting the leave. The Superintendent of Police should also obtain the opinion of the Gram Panchayat of the village where the prisoner resided before conviction and send to the District Magistrate along with his report. But the responsibility for the action is that of the District Magistrate. He should use his discretion and should refuse to grant leave only in cases in which he is satisfied that release is fraught with danger to the public safety. Security should be demanded only when it is really necessary, for example, when there is reasonable apprehension that the prisoner will break leave. When security is required, the District Magistrate of the place where the surety resides should be asked by the releasing District Magistrate to accept the surety and not call the surety to his own headquarters. If the prisoner intends to visit another district, where his near relatives reside, the concerned Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

(b) If the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected.”

6. If we take into consideration the Note attached to Rule 6(a) it clearly reflects that there is only one ground on which leave can be refused by the District Magistrate and it is only in case where he is satisfied that the release of the prisoner is fraught with danger to the public safety and under no other circumstances can the leave be refused as a matter of routine without cogent reasons. Further perusal of Rule 6 also clearly depicts that before the District Magistrate takes a decision on the application for grant of temporary leave he has to consult the District Superintendent of Police who in turn has to obtain the opinion of the Gram Panchayat of the village where the prisoner resides and if the refusal is on the ground of public interest, the refusal can be ordered for.

7. Taking into the facts and circumstances of the present case, it would show that Station House Officer has opined that there is every likelihood that dispute may take place between petitioner and victim's family. However, nothing is placed with reply what was the basis of such finding. The communication addressed to the Superintendent of Police dated 29.04.2015 by Station House Officer do not contain any compliance with respect to Rule 6 of the Leave Rules, 1989. On the basis of such report, Superintendent of Police has informed to District Magistrate not to release the petitioner. Thereafter, the application for leave of the petitioner was dismissed by the Executive District Magistrate, Durg. The order of rejection purports that in mechanical manner, the application of the petitioner has been dismissed. The communication has not been placed on record. Therefore, the rejection of application of petitioner for release of petitioner is against the spirit of Rule, 1989.

8. In **Dadu alias Tulsidas Vs. State of Maharashtra, 2000 (8) SCC 437**, the Supreme Court held as under :

“6. Parole is not a suspension of sentence. The convict continues to be serving the sentence despite granting of parole under the statute, rules, jail manual or the Government Orders. “Parole” means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually being in jail serving part of sentence.”

9. Similar matter had come up before the Madhya Pradesh High Court in 2002 and relying upon the aforesaid judgment of the Supreme Court, the Madhya Pradesh High Court in the case of **Jeevan Singh Verma Vs. State of M.P. & Others, 2002 (1) M.P.L.J. 347**, Hon'ble Justice Dipak Misra, as he then was, while deciding the

case after referring to the provisions of the Prisoners Act held as under :

“7. Now the question that falls for consideration is whether the petitioner should be granted the benefit of parole or temporary release. In this context I may profitably refer to the decision rendered in the case of *Inder Singh and Anr. v. The State (Delhi Administration)* 1978 SCC (Cri) 564 wherein their Lordships emphasized on rehabilitation and quoted a passage from Lewis Moore with approval. The said passage reads as under :

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation? No.! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him."

In the aforesaid case the Apex Court laid emphasis on the concept of 'Karuna' and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness. To quote

"parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up."

Thus parole has been treated as a curative strategy keeping in view the human dignity which is the quintessence of Article 21 of the Constitution.

8. The facts of the present case have to be judged on the basis of aforesaid enunciation of law. By the impugned order the District Magistrate has concurred with the opinion of the Superintendent of Police and rejected the prayer for temporary release. The reason ascribed is that the petitioner is likely to commit similar nature of offence. It is not shown on what foundation such an opinion has been expressed. It is not reflected in the impugned order that the convict has any criminal antecedent or has been a drug peddler. The order

does not indicate that the convict was a member of any organized group involved in the transaction. The convict is the only son and his mother is ill. In support of the illness of the mother Annexure P-2 has been brought on record. Refusal to grant parole or temporary release on a spacious plea that he will get himself involved in similar nature of crime, without indicating any kind of antecedent or any other essential facts is likely to cause trauma in a prisoner which is against the curative measure. Thus I am of the considered opinion that the order passed vide Annexure P-I is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of this Court and I so do. Consequently it is directed that the respondents shall extend the privilege of temporary release/parole as per law to the son of the petitioner.”

10. In the light of the aforesaid discussions in the given facts and circumstances of the case, the Court is of the opinion the order of refusal passed by the District Magistrate, Durg rejecting the application of the petitioner to grant parole do not fall in line to the Rules of 1989 and object behind it and sufficient reasons has not been shown. Accordingly, the said order of refusal passed by the District Magistrate, Durg deserves to be and is hereby set-aside.
11. As a consequence, the case of the Petitioner for grant of temporary leave/parole is again ordered to be placed before the concerned District Magistrate who in turn in consultation with the Superintendent of Police and also keeping in view Rule 6 of the Rules of 1989 in this regard, shall pass a fresh order within a period of 15 days from the date of presentation of the certified copy of this order.
12. The petition accordingly stands allowed.

Sd/-
(Goutam Bhaduri)
Judge