

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 410 of 2017**

Devanand S/o Shatrughan Nirmalkar, Aged About 23 Years R/o Village Tandwa, Basantpaara, Police Station Tilda Newra, District Raipur, Chhattisgarh. Through Shatrughan Nirmalkar, S/o Shri Gendlal Nirmalkar, Aged About 49 Years, R/o Village Tandwa, Basantpara, Police Station Newra, District Raipur, 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, Raipur, District Raipur, Chhattisgarh.
4. The District Magistrate, Raipur, District Raipur, Chhattisgarh.
5. The Superintendent Of Police, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For the Petitioner : Shri Sunil Pillai, Advocate.

For the Respondents/ State : Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****10.10.2017**

Heard.

1. Petition under Article 226 of the Constitution of India has been brought by the petitioner with a prayer to quash the order passed by

respondent No.4 and direct to release the petitioner on leave under the provisions of C.G Prisoners Leave Rules, 1989.

2. It is submitted that petitioner is undergoing life sentence in connection with conviction in Sessions trial. He is in jail since 2014 and has served sentence of more than three years. On the basis of his entitlement for being released on leave under the provisions of C.G Prisoners Leave Rules, 1989, he made an application for temporary release, which has been arbitrarily and mechanically rejected by respondent No.4 without assigning any reason. Hence, this petition.
3. Learned counsel for the State has opposed the petition and submits that if the petition is disposed off with a suitable direction in that case State do not have any objection.
4. I have heard the learned counsel for the parties and perused all the documents placed on record.
5. The memo dated 28.11.2016 vide **Annexure P1** by respondent No.4 is cyclostyled typed copy of order in the name of the petitioner was inserted in the blank part of cyclostyled typed copy that release of prisoner on temporary leave is not recommended. Which shows in application of mind.
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 03.02.2017, 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
7. 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 03.02.2017 passed by respondent No.4, is set aside.

8. 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.
9. 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.
10. Considering the submission made, without any interference into the authority of the District Magistrate(respondent No.4), it is directed that respondent No.4 shall consider and pass order for grant of leave to

the petitioner for the period of leave applied for preferably within 15 days from the date of receipt of this order.

11. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

jamal/