

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 31 of 2016**

- Santosh Yadu S/o Falgo Prasad Yadu, Aged About 25 Years R/o Village Beloudi, Police Station Ranitarai, District Durg (Chhattisgarh) Presently In Central Jail Durg, Through Falgo Prasad Yadu S/o Late G. N. Yadu, Aged About 50 Years, R/o Village Beloudi, Police Station Ranitarai, District Durg (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Home Department, Mantralaya, Mahanadi Bhawan, New Raipur (Chhattisgarh).
2. The Jail Correctional Service Chhattisgarh, Director General (Prisoners) Jail Road Raipur, (Chhattisgarh).
3. The Jail Superintendent, Central Jail Durg, District Durg (Chhattisgarh).
4. The District Collector, Durg District Durg (Chhattisgarh).
5. The Superintendent Of Police, Durg, District Durg (Chhattisgarh).

---- Respondents

For Petitioner
For State

Mr. B.P. Singh, Advocate
Mr. S.R.J. Jaiswal, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****09.02.2017**

1. The present Petition has been filed seeking direction to the Respondents for considering the case of the Petitioner for grant of leave and release him for a period of 10 days under the provisions of Rule 6 of MP/CG Prisoners Leave Rules, 1989 (hereinafter "the Leave Rules").
2. Learned Counsel for the Petitioner submits that in the instant case

the Deputy Collector vide its order dated 29.10.2015 has rejected his application on the basis of the report of the Superintendent of Police. The report which is brought on record clearly shows that except for the father of the deceased there has been no objection raised by any of the villagers including Sarpanch of the village. He prays for the Petitioner can be granted benefit of 10 days leave.

3. Learned Counsel for the Petitioner submits that Rule 6 of the Leave Rules does not require consent of the family members of the deceased/injured for grant of leave to the applicant Prisoner. The only requirement under the rule is that the Superintendent of Police while submitting the report to the Collector shall conduct an inquiry so as to ascertain whether in the event of the accused being granted leave for a fixed period of 10 days would it in any manner affect public safety or would the people be put in danger or not. In the instant case there does not appear any such categorical finding by the Superintendent of Police except the observation of the father of the deceased having expressed anxiety in the event of the Petitioner being released. Whereas the Sarpanch of the village himself has given no objection as is reflected from the report of the Superintendent of Police dated 14.10.2015.
4. At this juncture it would be relevant to mention that this Court has already in past in a similar situation in WPCR No. 207/2014 decided on 17.08.2015 and also in WPCR No. 25/2016 decided by this Court on 23.11.2016 categorically held that the mandate of law as per Rule 6 of the Leave Rules, which is as under:-

“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 sent to the District Magistrate alongwith 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 concerning District 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.”

5. The only requirement of law is to ascertain whether Superintendent of Police is satisfied that granting of leave to the applicant would not in any manner be detrimental to public interest in large i.e. it should be inquired into by the Superintendent of Police that granting of the leave to the applicant prisoner should not affect the peace and tranquility of the locality nor should the life of the public be put to danger and the public safety on release of the applicant should be ensured. In the absence of all these conditions and following the decision passed by this Court in WPCR No. 207/2014 decided on 17.08.2015 and also in WPCR No. 25/2016 decided by this Court on 23.11.2016, this Court is of the opinion that the order passed by the Deputy Collector rejecting grant of leave to the present Petitioner vide its order dated 29.10.2015 is not proper and the report submitted by the Superintendent of Police also does not seem to be legal and justified.
6. Thus, the matter once again is remitted back to the Collector who in turn shall call a fresh report from the Superintendent of the Police, taking into account the provisions of the Rule 6 of the Prisoners Leave Rules, 1989, and thereafter shall pass a fresh order at the earliest preferably within a period of 3 months time from the date of receipt of this order.
7. With the aforesaid observation the Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE