

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 32 of 2018**

Tiharu Chowhan, S/o. Ghunu Chowhan, Aged About 62 Years, R/o. Village Achreetpali, P.S. Maalkharouda, District Janjgir-Champa, Chhattisgarh.

Through Visambhar, S/o. Tiharu Chowhan, Aged About 36 Years, R/o. Village Achreetpali, P.S. Maalkharouda, District Janjgir Champa Chhattisagarh.

---- 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 & Correctional Services Chhattisgarh, The Director General Prisons, Jail Road Raipur, District Raipur, Chhattisgarh.
3. The Jail Superintendent, Central Jail Bilaspur, District Bilaspur Chhattisgarh.
4. The District Magistrate, District Janjgir Champa, Chhattisgarh.
5. The Superintendent Of Police, District Janjgir Champa, Chhattisgarh.

---- Respondents

For Petitioner : Shri Sunil Verma, Advocate

For Respondents/State : Shri Ashish Shukla, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07.03.2018**

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 has been verbally informed about the fact that his application filed under Rule 6 (B) of the Prisoners Leave Rules, 1989 for release on parole has been dismissed, however, he has not been supplied with any order, therefore,

neither any ground has been assigned nor any written communication has been made, which could be subject of challenge in any forum. He would further submit that no return has been filed yet, therefore, the State may be directed to pass appropriate order in accordance with the rule.

3. 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.”

4. 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.

5. 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.”

6. 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-1 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."

7. In the light of the aforesaid discussions in the given facts and circumstances of the case, it appears that no communication has been

made to the petitioner, the District Magistrate is directed to decide the application of the petitioner for grant of temporary release/parole in view of Rule 6 of the Rules of 1989 and shall pass afresh order within a period of 15 days from the date of presentation of the certified copy of this order.

8. The petition accordingly stands allowed.

Sd/-
(Goutam Bhaduri)
Judge

ashok