

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 101 of 2018

- Omprakash, S/o Rameshwar, aged about 32 years, R/o Village Girwani, P.S. Bilaigarh, District- Balodabazar (C.G.).

Through: Pukram Patel, S/o Fulsingh Patel, aged about 22 years, R/o Village Girwani, P.S. Bilaigarh, District- Balodabazar (C.G.).

---- Applicant

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 Raipur, District Raipur (C.G.).
4. The District Magistrate, Balodabazar, District- Balodabazar (C.G.).
5. The Superintendent of Police Balodabazar, District- Balodabazar (C.G.).

---- Respondents

For Applicant

Shri Sunil Pillai, Advocate.

For State/respondent

Shri Ravindra Agrawal, Govt. Advocate

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

19/12/2018

1. By way of this petition, the petitioner is questioning the action of the District Magistrate, Baloda Bazar, whereby the application filed by the petitioner under Rule 5 of the Chhattisgarh Prisoners Leave Rule, 1989 (hereinafter referred to as 'the Rules, 1989') for his release on leave has been rejected by way of oral communication.

2. Petitioner's application under Rule 5 of the Rules, 1989 for his release on parole has been rejected on the ground that petitioner is involved in the heinous offence; and on the basis of report submitted by Superintendent of Police, Baloda Bazar – Bhatapara; there is apprehension of breach of peace in the village if the petitioner is released on parole.

3. Learned counsel for the petitioner submits that the action of the learned District Magistrate is apparently contrary to law as without assigning any

sufficient and cogent reasons, petitioner's application has been rejected. He submits that the concerned Gram-Panchayat has passed resolution stating that there is no apprehension of breach of peace in the village if the petitioner is released on parole. He also submits that as per report submitted by Superintendent of Police, Baloda Bazar dated 24.08.2017 (Annexure R-4), the Gram Panchayat has no objection if the petitioner is released on bail and on the basis of that report, learned District Magistrate, Baloda Bazar has rejected the previous application. The petitioner filed the fresh application through jail authority, which has also been rejected by the District Magistrate, Baloda Bazar-Bhatapara in a mechanical and arbitrary manner and without applying his mind and that by just accepting the recommendation of the Superintendent of Police, Baloda Bazar, has rejected the said prayer of the petitioner by way of oral communication.

4. On the other hand, Shri Ravindra Agrawal, learned counsel appearing for the State while supporting the action of the learned District Magistrate submits that the inquiry was duly conducted in the matter on the basis of the application filed by the petitioner and that by considering the recommendation of the concerned Superintendent of Police, the application as submitted by the petitioner has been rejected. He further submits that as per the said report of the S.P., Baloda Bazar wherein it has been observed that there is apprehension of breach of peace if the petitioner is released, the S.P. recommended not to release him on parole. In such circumstances, the application has rightly been rejected, which does not call for any interference in the instant writ petition.

5. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with the Petition carefully.

6. The petitioner was found guilty in connection with the crime punishable under Sections 302/34 on three counts, 120 (B) of the IPC; Section 27(3) of the Arms Act and Section 9 of the IPC and was convicted and awarded life imprisonment vide judgment dated 27.02.2013 passed by the 1st Additional Sessions Judge, Baloda Bazar. The said prisoner has completed incarceration for more than 8 years and, therefore, he applied for his release as per provisions contained in Rule 5 of the Rules, 1989 before the Jail Superintendent, Raipur.

7. Learned District Magistrate, Baloda Bazar- Bhatapara has rejected the application of the petitioner on the apprehension of his absconding and breach

of peace in village but in the document (Annexure R-2) dated 21.02.2017 submitted by the Additional District Magistrate Baloda Bazar it is specifically mentioned in paragraph 2 that there is no objection by the Gram Panchayat, Balapur if the petitioner be released on parole.

8. In the matter of **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 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.”

8. In the present case passing of order in such mechanical manner by the respondent No. 4 (The District Magistrate, District Baloda Bazar) has to be seriously deprecated, as this attitude can also be considered as disregard to the rules framed by the State Government under the Rules, 1989 and render it meaningless. Hence for these reasons, it appears that respondent No. 4 is sitting with mindset to pass order in mechanical manner rejecting the application for grant of leave under the Rules, 1989. Hence, taking serious note, the petition is allowed for issuance of direction. Respondent No. 4 (The District Magistrate, District Baloda Bazar) is directed to consider the application of the petitioner afresh for grant of leave for the period of leave applied for in accordance with law and the order shall be passed within a period of one

month from the date of receipt of certified copy of this order keeping in view the provisions prescribed under Rule 6 of the said Rules, 1989 strictly in letter and spirit.

9. Accordingly, the writ petition stands disposed of.

Sd/-
(Gautam Chourdiya)
v. Judge