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HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 137 of 2018**

- Harihar Yadav, S/o Late Sumaru Yadav, Aged About 40 Years, R/o Village Piprahi, Post- Bargarh, Police Station- Balrampur, District- Balrampur- Ramanujganj, Chhattisgarh. Presently He Is In Central Jail Ambikapur. Through The Santosh Yadav, S/o Shri Ayodhya Yadav, Aged About 22 Years, Brother In- Law (Jija) Of The Petitioner, R/o Village- Pundaga, Post- Udaipur, P. S. Ramkanda, District- Garhwa Jharkhand., District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home (Jail) Department, Mahanadi Bhawan Naya Raipur, District- Raipur, Chhattisgarh.,
2. District Collector, Balrampur, District- Balrampur- Ramanujganj, Chhattisgarh.,
3. Superintendent Of Police, Balrampur, District- Balrampur, Ramanujganj, Chhattisgarh.,
4. Jail Superintendent Central Jail, Ambikapur, District- Surguja, Chhattisgarh.,

---- Respondents

For Petitioner	:	Shri V.K.Pandey, Advocate.
For Respondents/State	:	Shri Raj Kumar Gupta, Deputy Advocate General

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****24.10.2018**

1. By way of this petition, the petitioner is questioning the propriety and validity of the order dated 22.01.2018 passed by the District Magistrate, Balrampur- Ramanujganj whereby the application filed by the petitioner under Rule 5 of the Chhattisgarh Prisoner's Leave Rules, 1989 (hereinafter referred to as 'the Rules, 1989') for his release on leave has been rejected.
2. Shri V.K.Pandey, learned counsel for the petitioner submits that the order

impugned as passed by the District Magistrate is apparently contrary to law. While passing the order impugned, the learned District Magistrate ought to have given his opinion, as required under Rule – 6 of the Rules, 1989. However, without forming any opinion as required, the order impugned has been passed, which is liable to be set aside. Shri Pandey submits that an enquiry was conducted on the basis of his application, in which, the village persons like Sarpanch, Up-Sarpanch and others have raised their 'no objection' with regard to release of the petitioner and submits further that although the relatives of the victim have raised their objection in this aspect, but the same ought not to have been taken into consideration as a ground for the refusal of his application, as per the provision prescribed under Rule 6 of the Rules, 1989. According to him, the application could be rejected only if it is found based upon the enquiry that the release of the petitioner would be detrimental to the public interest. In absence of such an opinion, the application as made ought not to have been refused. The order impugned is, therefore, liable to be set aside.

3. On the other hand, Shri Raj Kumar Gupta, learned Deputy Advocate General appears on behalf of the State while supporting the order impugned submits that the enquiry was duly conducted in the matter on the basis of the application filed by the petitioner where the relatives of the victim have raised very specific objection that if the petitioner would be released then it would be dangerous for their lives. It is, therefore, submitted by him that in view of the objections raised by the relatives of the victim, the release of the petitioner as such would be dangerous to the public safety. As such, the order impugned has rightly been passed by the learned District Magistrate, Balrampur-Ramanujganj on 22.01.2018, and therefore, the same deserves to be upheld.

4. I have heard learned counsel for the parties and perused the entire papers annexed with this petition carefully.
5. The petitioner was found guilty in connection with the crime punishable under Section 302 of the Indian Penal Code (I.P.C.) and was convicted and awarded life imprisonment vide order dated 15.06.2015 passed by the First Additional Sessions Judge, Ambikapur. The said prisoner has completed incarceration for almost more than 7 years and thereafter he applied for his release as per the provision prescribed under Rule 5 of the said Rules, 1989 before the Jail Superintendent, Central Jail, Ambikapur for the period of 12 days in relation to the place mentioned therein. Perusal of the record would show that after obtaining the said application, it was referred to the District Magistrate, respondent No.2 herein, who in turn, sought an opinion from the Superintendent of Police (respondent No.3) in order to ascertain as to whether the petitioner should be granted leave as such or not. The Superintendent of Police, Balrampur-Ramanujganj, in turn, directed the concerned Police Station to hold an enquiry about the petitioner and during the course of the enquiry, the statements of Sarpanch, Up-Sarpanch and others were recorded along with the widow and son of the deceased Abbas Miyan. During the course of said enquiry, the villagers have raised their 'no objection' with regard to the release of the petitioner on leave, however, an objection was raised by the family members of the victim. The record would show further that upon concurring with the said enquiry as conducted by the Station House Officer, the Superintendent of Police, vide its letter dated 21.12.2017 (Annexure P/4) informed the District Magistrate, Balrampur-Ramanujganj by recommending not to release the petitioner on leave. Based upon the said recommendation (Annexure P/4), the District Magistrate, Balrampur-Ramanujganj, vide its order impugned dated 22.01.2018 has rejected the application of the petitioner for grant of his

temporary release on leave, as required under the said Rules, 1989. This is the order which has been challenged by the petitioner.

6. Before examining the propriety of the order impugned, it is necessary to examine the Rules, known as Chhattisgarh Prisoner's Leave Rules, 1989 framed in exercise of the powers enumerated by Section 31 of the Prisoner's Act, 1900 (No.III of 1900). Rules 4, 5 and 6 of the said Rules, 1989 are relevant for the purpose, therefore, reproduced herein as under:

“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 fulfils 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. Application for Grant of Leave.--- (a) Request from prisoners for leave, under Section 31-A of the Act, shall be made in writing in Form 'F' to the Superintendent of the Jail (hereinafter called Superintendent) at the parade on Monday.

(b) The Superintendent shall personally examine the records of the prisoner making the request for leave and satisfy himself that the prisoner fulfils the conditions for grant of leave.

(c) If the prisoner fulfils the conditions of the leave, the Superintendent shall report the first request of the prisoner to the District Magistrate of the concerning district where the prisoner resided before conviction.

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 concerned 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.”

7. A bare perusal of the aforesaid Rule 4 provides conditions of leave, which would show that before granting leave under sub-section (1) of Section 31-A of the Act; the Releasing Authority is required to be satisfied that prisoner's release would not be detrimental to the public interest as provided under clause (c) thereof. The satisfaction of the Releasing Authority is, thus, a condition precedent for grant of leave to the prisoner.
8. Rule 5 of the Rules, 1989 authorises the prisoner to make an application for grant of leave as such in writing in Form 'F' to the Superintendent of Jail, who in turn, shall examine the records of the prisoner for his satisfaction that whether the prisoner making the application for leave has fulfilled the conditions for grant of leave or not, as per the terms stipulated in Rule 4 of the Rules, 1989. This Rule provides further that if the conditions of the leave fulfills by the prisoner, the Superintendent of Jail shall report his request (application) to the District Magistrate of the concerned district where the

prisoner resided before his conviction.

9. Further, by virtue of Rule 6 of the Rules, 1989, the District Magistrate would be the Sanctioning Authority for grant of first leave and such leave can be granted by him upon satisfying based upon enquiry that his release would not be detrimental to the public interest. As per the 'Note' appended to clause (a) of this Rule, the District Magistrate would be the responsible person for carrying out all the instructions in its proper manner for entertaining an application for grant of leave and may consult with the District Superintendent of Police in this aspect as well. After following all the instructions as stipulated herein above, the District Magistrate should exercise his discretion and should refuse to grant leave only in cases where he is satisfied that the release of the petitioner as such is fraught with danger to the public safety. Clause (b) of this Rule would suggest further that if the District Magistrate considers that the grant of such a leave is undesirable in the public interest, he shall thereupon intimate his opinion to the Superintendent of Police, who in turn, shall inform the prisoner for rejection of his application for grant of leave.
10. A combined reading of the aforesaid Rules would, therefore, lead to an irresistible conclusion that forming of an opinion of the District Magistrate that the release of the prisoner is either fraught with danger to the public safety or is undesirable in the public interest, is the sine qua non for refusal to grant such a leave.
11. Now, reverting back to the case in hand while keeping the aforesaid provisions in mind, it is evident from the order of the District Magistrate that no opinion as such has been formed before refusal of petitioner's application for grant of leave filed under Rule 5 of the Rules, 1989. Perusal of the enquiry as conducted by the Station House Officer as per the instruction of

Jail Superintendent would show that the Sarpanch, Up-sarpanch and guarantors of the petitioner have raised 'no objection' in order to release the petitioner as such in their statements, while relatives of the victim have raised their objection. But, a bare examination of the Rules, 1989, as framed, would, however, show that the objection of the relatives of the victim alone could not be a ground for rejection of such a grant. Normally, relatives of the victim would never give consent for his release for their emotional and sentimental reasons and that is the reason why the opinion of the District Magistrate based upon the said enquiry is needed in order to ascertain as to whether release of the petitioner is detrimental to the public safety or not. However, no opinion as required mandatorily in this regard, is formed by the District Magistrate before passing the order impugned. In such an eventuality, the order impugned cannot be held to be sustainable in law.

12. In view of the foregoing discussions, the order impugned dated 22.01.2018 passed by learned District Magistrate, Balrampur-Ramanujganj (C.G.), is hereby quashed. The petitioner is accordingly held to be entitled to leave for the period prayed by him in his application. It is directed further that the petitioner shall be released on the following conditions :

- a) that he shall furnish security to the satisfaction of the concerned Releasing Authority;
- b) that during the period of his leave, he shall not go to any place other than the place which has been mentioned in his application for grant of leave;
- c) that during his leave, he shall neither commit any crime nor to be involved in any such act which may have its bearing on public interest;
- d) that he shall present himself before the said Jail from where he was released and, it is made clear that in the event of accident,

disease or any kind of natural calamity, he shall surrender himself before any other nearest Police Station with proper ground.

13. With the aforesaid conditions, the petition is allowed. Let the concerned District Magistrate and the Jail Superintendent, Central Jail, do the needful in the matter within a period of 10 days from the date of furnishing the certified copy of this order. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge