

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 517 of 2017

Kriparam S/o Brijlal Sahu, Aged About 46 Years R/o Village Potiya, Police Station Gariyaband, District Gariyaband, Chhattisgarh. Through Narsingh Sahu , S/o Shri Samund Ram Sahu, Aged About 27 Years, R/o Village Kharkhara, Police Station Chhura, District Gariyaband, 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, Gariyaband, District Gariyaband Chhattisgarh.
5. The Superintendent Of Police , Gariyaband, District Gariyaband Chhattisgarh.

---- Respondents

For petitioner – Shri Sunil Pillai, Advocate.
For State- Shri Adhiraj Surana, Dy.G.A

Hon'ble Shri Justice Goutam Bhaduri

Order

25/01/2018

Heard.

1. Instant petition is filed making a prayer to direct the respondents to release the petitioner on leave under the Chhattisgarh Prisoner's Leave Rules, 1989 and to quash order rejecting leave of the petitioner by the District Magistrate.
2. Perusal of the return of the State which is placed for perusal would show that State has contended that the petitioner has submitted an application in prescribed format for grant of ordinary leave on 3/08/2016 to the Superintendent, Central Jail, Raipur which has been duly forwarded to the District Magistrate, District Gariyaband by Superintendent, Central Jail, Raipur on 4/08/2016 as per Annexure R-1. Thereafter, reminders have been

sent to the learned District Magistrate to decide the application of the petitioner on 17/11/2016, 21/12/2016 and 19/09/2017 which have been filed as Annexure R-2. Therefore, according to the State application of the petitioner is yet to be decided.

3. As per Rule 7 of the C.G. Prisoner's Leave Rules, 1989 the examination of request of a prisoner for leave shall be treated as urgent at all stages and orders on the request shall be communicated to the prisoner expeditiously as far as possible.

4. It appears in this case that there is gross violation of Rule 7 of the C.G. Prisoner's Leave Rules, 1989.

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 Shri 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 decision and in the given facts of this case, this court is of the opinion that the District Magistrate, Gariyaband may pass orders on the application of the petitioner to grant parole or not which may fall in line to the Rules of 1989, keeping in mind the spirit of the law laid down by the Supreme Court and the object behind it within a further period of 30 days after receipt of copy of this order.

8. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

