

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 453 of 2017

Mohan Prasad Pandey @ Mohan @ Chhotu, S/o. Sant Prasad Pandey @ Sant Kumar Pandey, Aged About 34 Years, R/o. Baniyagaon, P.S. Bhanpuri, District Bastar, Chhattisgarh.

Through His Friend : Solman Kashyap, S/o. Laxman Kashyap, Aged About 26 Years, R/o. Village Nandpur, P.S. Bhanpuri, Amrigarh, Tahsil & District Bastar, Chhattisgarh.

----Petitioner

Versus

1. State Of Chhattisgarh, Through the Principal Secretary, Department Of Home (Jail) Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Jail & Correctional Services Chhattisgarh, The Director General Prisoners, Jail Road, Raipur Chhattisgarh.
3. The Jail Superintendent, Central Jail Jagdalpur, District Bastar, Chhattisgarh.
4. The Superintendent Of Police, District Bastar Jagdalpur, Chhattisgarh.

---- Respondents

For Petitioner : Smt. Kiran Jain, Advocate

For State/Respondents : Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.01.2018

1. The present petition is filed by 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. Learned counsel for the petitioner submits that the petitioner who was convicted in a Sessions Trial No.160/2017 under Section 302 of Indian Penal Code was sentenced to life imprisonment and he is in jail since 16.07.2007. It is further contended that the application for release of the petitioner on parole was sent for enquiry, which was in turn sent to the S.H.O. Bhanpuri and various statements were

recorded including that of the victim. It is further submitted that the Gram Panchayat and the surety stated that they were ready to take the surety if the petitioner is released on parole; however, since there was an objection by the relatives of the victim, the report was handed over to the District Magistrate and the same is disallowed. Thereby, refused to grant parole to the petitioner. Counsel for the petitioner further submits that it is a case where the order passed by the District Magistrate was without proper consideration of the rules governing the fields and it has been passed in a mechanical manner. Counsel for the petitioner relies upon the decision of this Bench rendered in Writ Petition (Cr.) No. 69 of 2016 wherein this Court had allowed a similar petition and ordered the concerned District Magistrate to pass a fresh order in the light of the rules applicable for the grant of parole.

3. Learned counsel for the State opposes the petition.
4. 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.”

5. Similarly, Rule 6 of the Rules of 1989 deals with the powers conferred upon the sanctioning authority while considering the application for grant of leave, which again for ready reference is reproduced below :

“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 send to the District Magistrate along with 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 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 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.”

6. 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.
7. Taking into the facts of this case, the documents would reveal that the application when was filed to release the petitioner on parole, the same was forwarded to the District Magistrate which in turn was forwarded to the Superintendent of Police, District Bastar. The internal communication which was in turn sent by Superintendent of Police to the District Magistrate dated 23.06.2017 purports that the surety Thalesh Kumar Pandey & Smt. Hemlata Pandey are agreed

to take the surety bond of the petitioner. It also records that the Gram Panchayat has also not objected to release the petitioner on parole; however, as per the reply of the State, Babita Pandey, W/o. Bhupesh Pandey (grand-daughter of the deceased) has objected for release of the petitioner. Therefore, no recommendation was made by the Superintendent of Police to release the petitioner. Thereafter, on the basis of such recommendation, by a communication dated 19.07.2017 the prayer of the petitioner to release him for a temporary period was dismissed. The reasons for denying the release of the petitioner predominantly was based on the statement of the objector. The Gram Panchayat in the instant case has accorded their consent to release the petitioner on parole. Considering the object of Rules, the opinion of Gram Panchayat which is a statutory elected body and has a collective wisdom of villagers, would always have precedent over the opinion of the relative of the victim at all the times. It is quite natural that relatives of victim would always oppose the release of prisoner who is convicted. The order of rejection purports that in mechanical manner, the application for release of the petitioner on parole has been dismissed. Therefore, the tenure of the order ignoring the opinion of the Gram Panchayat seems to be passed only on consideration of statements of family members of victim and appears to be against the spirit of Rule 1989.

8. 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."

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 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."

10. In the light of the aforesaid discussions in the given facts and circumstances of the case, the Court is of the opinion that the order passed by the District Magistrate, Bastar dated 19.07.2017 rejecting the application of the petitioner to grant parole do not fall in line to the Rules of 1989 and object behind it and sufficient reasons has not been shown. Accordingly, the order dated 19.07.2017 (Annexure P-3) passed by the District Magistrate, Bastar, deserves to be and is hereby set-aside.
11. As a consequence, the case of the petitioner for grant of temporary leave/parole is again ordered to be placed before the concerned District Magistrate who in turn in consultation with the

Superintendent of Police and also keeping in view Rule 6 of the Rules of 1989 in this regard, shall pass a fresh order within a period of 15 days from the date of presentation of the certified copy of this order.

12. The petition accordingly stands allowed.

Sd/-
(Goutam Bhaduri)
Judge