

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(Cr.) No. 262 of 2018**

Ganeshram S/o Dhaniram Kashyap, Aged About 59 Years R/o Village Salkhan, P.S. Shivrinaryan, District- Janjgir- Champa, Chhattisgarh. Through Mahendra Kumar Kashyap, S/o Ganeshram Aged About 32 Years, R/o Village- Salkhan, P. S. Shivrinarayan, District- Janjgir- Champa, 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 Bilaspur, District- Bilaspur, Chhattisgarh.
4. The District Magistrate, District Janjgir- Janjgir- Champa, Chhattisgarh.
5. The Superintendent Of Police District Janjgir- Champa, Chhattisgarh. **---- Respondents**

For Petitioner:	Shri Sunil Pillai appears on behalf of Shri Sunil Verma, Advocate.
For State/Respondents:	Shri S.R.J. Jaiswal, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****07.12.2018**

1. By way of this Petition, the Petitioner is questioning the action of the District Magistrate, Janjgir-Champa, 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. Shri Sunil Pillai, learned counsel for the Petitioner submits that the action of the learned District Magistrate is apparently contrary to law. While rejecting the application as such, the learned District Magistrate ought to

have given his opinion as required under Rule 6 of the Rule, 1989. However, without forming any opinion as required, the application has been rejected in an arbitrary manner which is liable to be set aside. Shri Pillai submits further that an inquiry was conducted on the basis of the said application, in which, certain villagers have stated in their statements including the certificate of the concerned Gram Panchayat raising no objection with regard to releasing of the Petitioner even then application has been rejected without applying its mind. According to him, the Application could be rejected only if it is found based upon the inquiry that release of the Petitioner would be detrimental to the public interest. In absence thereof, the application as made by the Petitioner ought not to have been refused. However, the learned District Magistrate in a mechanical and arbitrary manner and without applying his mind and that by just accepting the recommendation of the Superintendent of Police, Janjgir-Champa, has rejected the said prayer of the Petitioner by way of oral communication.

3. On the other hand, S.R.J. Jaiswal, learned counsel 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 submits further that as per the said report of the Superintendent of Police wherein it has been observed that there is apprehension of breach of peace if the Petitioner is released and, therefore, recommended not to release him. In such circumstances, the application has rightly been rejected by way of oral communication of the

learned District Magistrate.

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

5. The Petitioner was found guilty in connection with the crime punishable under Section 302/34 of IPC and was convicted and awarded life imprisonment vide judgment dated 03.11.2015 passed by the learned District and Sessions Judge, Janjgir-Champa in connection with the Sessions Trial No.156/13. The said prisoner has completed incarceration for more than four and half years and, therefore, he applied for his release as per the provision provided under Rule 5 of the said Rules, 1989 before the Jail Superintendent, Central Jail, Bilaspur for a period of twelve days and the time required for traveling in relation to the place mentioned therein.

6. Persual of record would show that after obtaining the said application, the same was referred by said Jail Superintendent to the learned District Magistrate, who in turn, sought an opinion from Superintendent of Police, Janjgir-Champa in order to ascertain as to whether the Petitioner should be granted leave as such or not. The said Superintendent of Police, in turn, directed the concerned Station House Officer to hold an inquiry about the Petitioner and during the course of the inquiry, the statements of villagers were recorded and the certificate of concerned Gram Panchayat was produced. A bare perusal of their statements vis-a-vis the said certificate would show that they have not raised any objection with regard to release of the Petitioner on leave. However, based upon the inquiry report submitted by the concerned Station House Officer, the Superintendent of Police, Janjgir-Champa has

recommended the learned District Magistrate for not releasing the Petitioner as according to him there is apprehension of breach of peace in the society on account of his release on parole. Perusal of the report of Superintendent of Police would, however, show that it was made without applying the mind and the apprehension as such was in fact baseless. Acting upon such a report, the said application of the Petitioner under the Rules, 1989 has been rejected by the learned District Magistrate in a cursory and arbitrary manner.

7. Passing of order in such mechanical and arbitrary manner by the Respondent No. 4 (The District Magistrate, District-Janjgir-Champa) 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, this Petition is allowed for issuance of direction. Respondent No. 4 (The District Magistrate, District Janjgir-Champa) 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 ten days after the communication of this order positively by taking into consideration the provisions prescribed under Rule 6 of the said Rules, 1989 strictly in letter and spirit.

8. The Petition is accordingly disposed of with the aforesaid direction.

Sd/-

(Sanjay Agrawal)
JUDGE