

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(Cr.) No. 251 of 2018**

Nityanand S/o Gajannand Sahu, Aged About 24 years (presently 33 Years) R/o High School Para Lailunga, P.S. Lailunga, District Raigarh Chhattisgarh. Through His Father Gajanand Sahu, S/o Dhaneshwar Sahu, Aged About 60 Years, R/o High School Para Lailunga, P.S. Lailunga, District Raigarh Chhattisgarh.

---- Petitioner**Versus**

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

---- Respondents

For Petitioner:

Shri Rajesh Jain, Advocate.

For Respondents/State:

Shri Arvind Dubey, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****26.11.2018**

1. By way of this Petition, the Petitioner is questioning the legality and propriety of the order dated 03.03.2018 passed by the Additional District Magistrate, Raigarh, 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 Rajesh Jain, learned counsel for the Petitioner submits that the order impugned as passed by the Additional District Magistrate is apparently contrary to law. While passing the order impugned, the learned Additional District Magistrate ought to have given his opinion based upon

the statements of the villagers made during inquiry as required under Rule 6 of the Rules, 1989. However, without considering the statements of the villagers and that by considering the letter of the Superintendent of Police, Raigarh alone has rejected the said application which is apparently contrary to law, and therefore, liable to be set aside. He further submits that an inquiry was conducted on the basis of his application, in which, the villagers were examined and they have stated very specifically in their statements that it would not create any breach of peace if the Petitioner is released on leave. However, the same has even not been taken into consideration while rejecting the said application. According to him, 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 of any material in this aspect, the application as made ought not to have been refused by the learned District Magistrate on the basis of letter submitted by the Superintendent of Police, Raigarh which is even otherwise not based upon the consideration of the statements of the villagers. The order impugned is, therefore, liable to be set aside.

3. On the other hand, Shri Arvind Dubey, learned counsel for the State while supporting the order impugned submits that the application as made by the Petitioner was duly examined and after the examination of the statements of the villagers, the concerned Station House Officer has opined that if the Petitioner is released, it would then create breach of peace in the society and after considering the said report, concerned Superintendent of Police has forwarded the same to the Additional District Magistrate while opining that it would not be desirable for releasing the Petitioner on leave under the Rules 1989. He submits further that only

after considering the report as submitted by the Superintendent of Police, the order impugned has been passed and, therefore, the same deserves to be affirmed.

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

5. The Petitioner was found guilty in connection with the crime punishable under Sections 147, 148, 452, 325, 506(B), 364, 302, 201 read with Section 149 of IPC and was convicted and awarded the life imprisonment vide judgment dated 07.05.2013 passed by the Second Additional Sessions Judge, Raigarh (C.G.), affirmed further in appeal by this Court vide order dated 19.09.2016 in an appeal preferred by the Petitioner and other accused persons. The said prisoner has completed incarceration for more than ten 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, Bilaspur for a period of twelve days in relation to the place mentioned therein.

6. Perusal of the record would show that after obtaining the said application, the same was referred to the District Magistrate, who in turn, sought an opinion from the Superintendent of Police, Raigarh in order to ascertain as to whether the Petitioner should be granted leave as such or not. The Superintendent of Police, Raigarh, in turn, directed the concerned Station House Officer to hold the inquiry about the Petitioner and during the course of the inquiry, the statements of villagers namely Chaitram, Mahesh Ram Bhagat, Janak Bhagat, Shaukilal and Mannulal were examined. During course of the said inquiry, all the villagers have not raised any objection with regard to release of the Petitioner on leave and,

instead have stated that it would not create any breach of peace in the society if he released on leave.

7. After conducting the said inquiry, the Station House Officer, Lailunga, District-Raigarh has submitted its report on 13.02.2018 before the Superintendent of Police while opining that release of Petitioner would be detrimental to the interest of the society and it would not be desirable for releasing the petitioner on parole else there is strong possibility of his absconding. The Superintendent of Police, Raigarh, in turn, has referred the matter to the District Magistrate, Raigarh while recommending the same thing that it would not be desirable for releasing the Petitioner on parole. The learned District Magistrate has then forwarded the same to the Additional District Magistrate for passing an appropriate order in this regard. The said Additional District Magistrate, Raigarh, in turn, while acting upon the recommendation as submitted by the Superintendent of Police has rejected the said application for the release of the Petitioner on parole.

8. Pertinently to be noted here that although the Station House Officer, Lailunga and concerned Superintendent of Police, Raigarh have recommended not to release the Petitioner on parole, however a bare perusal of the statements of villagers, it is evident that none of the villagers have raised any objection with regard to releasing of the Petitioner on parole. In fact, they have stated very specifically that the Petitioner is a man of simple nature and if he released on parole, his release would not create any breach of peace in the society. Surprisingly to be noted here further that despite the statements of the villagers as such, the alleged reports were submitted by the Station House Officer as well as by

Superintendent of Police. The reports so submitted are apparently contrary to the statements of the villagers and, therefore, the same cannot be held to be sustainable based upon the said facts. Be that as it may, the learned Additional District Magistrate while acting upon such a report has passed the order impugned and rejected the said application. Perusal of the order impugned would show that although the Additional District Magistrate has rejected the said application but the opinion as required under Rule 6 of the Rules, 1989 was not taken into consideration in its proper manner. Thus from any stretch of imagination, the order impugned rejecting the application filed under Rule 5 of said Rules 1989 cannot be held to be sustainable and, therefore, liable to be and is hereby set aside.

9. The Petitioner is accordingly held to be entitled to be released on leave as prayed by him in his application dated 03.01.2018. 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 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.

10. With the aforesaid conditions, the Petition is allowed. Let the concerned District Magistrate/Additional District Magistrate and the Jail Superintendent, Central Jail, Bilaspur do the needful in the matter within a period of 15 days from the date of furnishing the certified copy of this

order. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita