

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 555 of 2017**

Nand Kumar Chandra S/o Shri Ram Prasad Chandra Aged About 44 Years R/o Village- Bodsara, P. O. Bodsara, Thana Jaijaipur, District Janjgir Champa, Chhattisgarh. through Tara Chandra, W/o Nand Kumar Chandra, Aged About 34 Years R/o Village-Bodsara, Thana Jaijainagar, District Janjgir Champa, Chhattisgarh., Chhattisgarh

--- **Petitioner**

Versus

1. State of Chhattisgarh through Its Principal Secretary, Department of Home Jail Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.,
2. The Jail & 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 Champa, Chhattisgarh.,
5. The Superintendent of Police, District Janjgir Champa Chhattisgarh.,

--- **Respondents**

For Petitioner	:	Shri Sunil Pillai, Advocate
For Respondents-State	:	Shri Adhiraj Surana, Dy. Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

22-02-2018

1. Heard.
2. The present petition is against the order dated 24.09.2016 passed by Respondent/4 District Magistrate, Janjgir Champa whereby the prayer for releasing the petitioner on parole has been rejected on

the ground that in case the parole is granted, he may abscond.

3. Learned counsel for the petitioner would submit that Rule 6 of the Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to as Rules, 1989) and the note appended thereto would show that only in cases when the release of prisoner is fraught with the danger to the public safety, the District Magistrate may refuse to grant leave and the ground of rejection which has been stated that the petitioner may abscond is not embodied in Rule 6 of the Chhattisgarh Prisoners Leave Rules, 1989. He submits that in such case if it is felt by the District Magistrate that the petitioner may abscond, he may take back the surety. He further submits that the rejection order would show that the Sarpanch and villagers of Gram Panchayat, Bodsara and two sureties namely Sukhnandan Budheshwar have supported to release the petitioner on parole and therefore, in absence of any fact that the release would result into the danger to the public safety, the same cannot be intermittent.
4. Counsel for the State, however, opposing the petition submits that taking into consideration the gravity of the offence committed by the petitioner and the fact that the Sub Divisional Officer (Police) and the Superintendent of Police have not recommended the case of the petitioner for grant of parole, the District Magistrate has rightly rejected the same and which cannot be said to be bad in law or infirm in any manner.
5. 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.”

6. If we take into consideration the Note appended 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 felt 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. Rule 6(a) and the note appended thereto read as under:

“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 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 Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

7. In the light of the aforesaid principles, if the order dated 24.09.2017 is examined, it reflects that when the application for

leave was preprocessed, two sureties namely Sukhnandan, son of Dhan Sai Chandra and Budheshwar son of Ramadhar Chandra have come forward and furnished the bail of Rs.25,000/- and the Gram Panchayat of Bodsara and the villagers of the same village Bodsara have given consent for release of the petitioner whereas the second part of the order would show that rejection of parole was on the ground that the petitioner may flee away. If such ground of rejection is considered in the light of the note appended to Rule 6, it would show that the parole can be refused only in case when the District Magistrate feels that the release of the prisoner is fraught with danger to the public safety. Here in the instant case no such fact exists on the face of record. Only the rejection is made on the ground that if the petitioner is released, he may flee away. Rule 6 takes within its ambit that if the District Magistrate feels that the applicant may flee away, he may ask for the surety. Perusal of the order dated 24.09.2016 would show that it was mentioned therein that the sureties in sum of Rs.25,000/- were already furnished, therefore, the ground on which it was rejected is against the spirit of Rule 6 of the Rules 1989. Consequently the same cannot be sustained.

8. Accordingly the order dated 24.9.2016 is set aside. The District Magistrate, Janjgir Champa is directed to reconsider the case of petitioner in the light of the documents filed, whether they comply with rule 6 of the Rules 1989 and thereafter shall pass a fresh order within a period of two weeks from the date of presentation of certified copy of this order. It is expected that the order to be so passed falls in line with rule 6 of Rules 1989 and the Principles

laid down by Hon'ble the Supreme Court in case of *Inder Singh and another Vs. State (Delhi Administration)* AIR 1978 S.C. 1091. In the result, the petition stands allowed.

**Sd/-
Goutam Bhaduri
Judge**

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