

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(Cr.) No.538 of 2018**

Keshavlala Kushwaha S/o Ramprasad Kushwaha Aged About 57 Years
 R/o Village Kotrahi (Akwaripra) Post Wadrafnagar P.S. Basantpur, District-
 Balrampur, Ramanujanj, Chhattisgarh, Throuh Devlal Kushwaha S/o
 Ramprasad Kushwaha, Aged About 61 Years, R/o Village- Katrahi
 (Akwaripara) Post Wadrafnagar P.S. Basantpur, District- Balrampur
 Ramanujanj, Chhattisgarh.....(In Jail)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Home Department,
 Mantralaya Mahanadi Bhawan New Raipur, Chhattisgarh., District : Raipur,
 Chhattisgarh
2. Director General Jail Raipur, District- Raipur, Chhattisgarh., District :
 Raipur, Chhattisgarh
3. Jail Superintendent Central Jail Ambikapur District- Surguja, Chhattisgarh.,
 District : Surguja (Ambikapur), Chhattisgarh
4. Collector District- Magistrate Balrampur Ramanujanj, District- Balrampur,
 Ramanujanj, Chhattisgarh., District : Balrampur, Chhattisgarh

----Respondents

For Petitioner:	Shri Shakti Raj Sinha, Advocate.
For Respondents/State:	Shri Ravindra Agrawal, Government Advocate.

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

05.12.2018

1. By way of this Petition, the Petitioner is questioning the propriety and validity of the order dated 05.07.2018 passed by the District Magistrate, Balrampur-Ramanujanj, whereby the application filed by the Petitioner under Rule 5 of the Chhattisgarh Prisoner's Leave Rules, 1989 (for short the Rules of 1989) for his release on leave has been rejected.
2. Learned Counsel for the Petitioner submits that the order impugned as passed by the District Magistrate is apparently contrary to law. While passing

the order impugned, the learned District Magistrate ought to have examined the statements of independent witnesses, who have stated very specifically that in case the Petitioner is released on parole, it would not cause breach of peace in the society. However, without considering their statements, the District Magistrate has passed the order impugned merely on the basis of the recommendation as submitted by the concerned Superintendent of Police. According to his further submission, the application could be rejected only if it is found to be based upon enquiry that the release of the Petitioner would be detrimental to the public interest. While inviting the attention to the statements of the witnesses, it is submitted further by him that only the relatives have raised objection, however, without considering the certificate issued by the concerned Gram Panchayat, the learned District Magistrate has committed an illegality in rejecting the said application.

3. On the other hand, Shri Ravindra Agrawal, learned Government Advocate appearing for the State, while supporting the order impugned submits that the enquiry was duly conducted in the matter on the basis of the application filed by the Petitioner where, the relatives of the Petitioner have raised their specific objection that if the Petitioner would be released, then it would cause breach of peace in the society and the relatives of the deceased could be assaulted. It is, therefore submitted by him that in view of the objection raised by the relatives of the victim, the release of the Petitioner would be dangerous to the public in the society. As such, the order impugned has rightly been passed by the learned District Magistrate, Balrampur-Ramanujganj on 05.07.2018 and therefore, the same deserves to be upheld.

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

5. The Petitioner along with one Devlal was found to be guilty in connection with a crime punishable under Sections 302 and 307/34 IPC and

they were convicted and awarded life imprisonment vide order dated 09.08.1997 passed by the learned Sessions Judge, Ambikapur, District Surguja. The said judgment has been affirmed by this Court vide order 07.10.2013 passed in Criminal Appeal No.1730/1997. The Petitioner has completed incarceration for almost more than 6 years 8 months and thereafter, he applied for his release as per the provisions prescribed under Rule 5 of the Rules of 1989 before the Superintendent of Jail, Central Jail, Ambikapur for a period of 12 days in relation to the place mentioned therein.

6. Perusal of the record would show that after obtaining the said application, it was referred by the concerned Jail Superintendent to the District Magistrate on 09.02.2018, who in turn, sought an opinion from the Superintendent of Police, Balrampur-Ramanujganj in order to ascertain 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 enquiry about the Petitioner and during the course of the enquiry, the statements of the villagers as well as the relatives of the deceased were examined. During the said enquiry, the villagers namely Jagdhari and Rajaram have raised their no objection with regard to the release of the Petitioner on leave. However, objection was raised by the family members of the deceased Sudama. The record would show further that upon conducting the said enquiry, the Station House Officer has furnished its report to the concerned Superintendent of Police, who in turn, vide his letter dated 12.03.2018, informed the learned District Magistrate, Balrampur-Ramanujganj by recommending not to release the Petitioner on leave. Upon receiving the said report, the District Magistrate has passed the order impugned after considering the statements of the villagers and rejected the said application vide his order impugned dated 05.07.2018 upon observing that the release of the Petitioner would not be in the interest of the society as

he could create breach of peace in the society. The District Magistrate has thus refused the said application, however without considering the statements of all the villagers as well as the certificate submitted by the Gram Panchayat, Kotrahi, Wadrafnagar. While considering the said enquiry, the learned District Magistrate ought to have examined the statements of the independent villagers in its proper manner as the independent witnesses namely Jagdhari and Rajaram have stated in their statements very specifically that the release of the Petitioner would not be detrimental to the interest of the society. Besides, a certificate was submitted during enquiry by the Gram Panchayat, Kotrahi, Post Wadrafnagar, District Balrampur-Ramanujganj in which, it is stated very specifically that the Gram Panchat has no objection in case he is released on parole. However, while passing the order impugned, learned District Magistrate has not taken into consideration the said certificate also. It is true that relatives of the deceased Sudama have raised an objection regarding his release on parole, but a bare examination of the Rules of 1989 as framed, would however, show that the objections of the relatives of the victim alone could not be a ground for rejection of such a grant, particularly when others have not objected as such. Normally, relatives of the victim would never give consent for his release for their emotional and sentimental reasons. Considering the over all situations, the order impugned cannot be held to be sustainable in law.

7. In view of the foregoing discussions, the order impugned dated 05.07.2018 passed by the learned District Magistrate, Balrampur-Ramanujganj is hereby quashed. The Petitioner is accordingly held to be entitled to leave for the period prayed by him in his application. 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 said 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.

8. With the aforesaid conditions, the Petition is allowed. Let the concerned District Magistrate and the Jail Superintendent, Central Jail, Ambikapur do the needful in the matter within a period of 10 days from the date of furnishing the certified copy of this order. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya