

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 16 of 2019

Kundan Kumar Sharma S/o Arvind Sharma Aged About 41 Years
Convict No. 2973/10, Lodged In Raipur Central Jail, Raipur, District
Raipur Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Department of Home, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Jail Superintendent Central Jail Raipur, District Raipur Chhattisgarh.,
3. Superintendent of Police Raipur District Raipur Chhattisgarh.
4. Collector Raipur, District Raipur Chhattisgarh.
5. Additional District Magistrate Raipur, District Raipur Chhattisgarh.
6. Station in Charge Police Station Saraswati Nagar, District Raipur Chhattisgarh. **--- Respondents**

For Petitioner : Mr. Kishore Narayan, Advocate
For Respondents-State : Mr. Ravi Bhagat, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

15.03.2019

1. The present petition is against the order dated 20.03.2018 passed by Additional District Magistrate, Raipur, wherein the application of the petitioner to release him on parole for 10 days has been rejected.
2. Learned counsel for the petitioner would submit that the statements of Councilor of the concerned ward as also the neighbors and other persons of the locality were recorded, and they have not objected to the release of petitioner on parole and have expressed their views in favour of the

petitioner's release. However, the release has been refused/rejected by the ADM, Raipur only on the ground that there is no possibility of leading peaceful life by the petitioner if he is released on parole.

3. Learned counsel for the petitioner would submit that Rule 6 of the Chhattisgarh Prisoners Leave Rules 1989 (hereinafter referred to "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 has been stated that the since the petitioner has been involved in major crime, there is a possibility of tampering peace and tranquility and the rejection of the petitioner's release on parole on such ground cannot be sustained in view of Rule 6 of Rules, 1989.
4. Reply has been filed on behalf of the State. Learned State Counsel opposes the release of the petitioner on parole and submits that the petitioner was involved in serious offence u/s 302, 34 of IPC and in the ensuing Holy festival, if the applicant is released on parole, he may tamper the peace and tranquility in the locality. He further submits that the leave of the petitioner was proposed to be granted in the month of February 2018 and since the time period has already elapsed, at this stage the release of the petitioner on parole cannot be sustained.
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 feels 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 ***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.”

8. In the matter of **State of Gujarat and another v. Lal Singh alias Manjit Singh and others (2016) 8 SCC 370**, the Supreme Court at para 33 has laid down the scope of jurisdiction while granting

temporary parole, the same is reproduced as under: -

"33. So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In *Sunil Fulchand Shah v. Union of India* (supra) the Constitution Bench while dealing with the grant of temporary release or parole under Sections 12(1) and Section 12(1-A) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu."

9. In view of the aforesaid Rules and principles, when the reply of the State is perused, it shows that the Superintendent of Jail has recommended the petitioner for his release on parole as his conduct in jail is good.
10. After perusal of the reply, the reasons assigned by the State for rejection of the application for parole cannot be sustained. The statements of ward councilor as also the residents of the locality have been recorded wherein they have stated that in case of petitioner's release on parole, they will ensure the fact that the petitioner is not indulged in any crime. In view of the aforesaid discussion, the petition is allowed.

11. The petitioner shall be released on parole on furnishing two sureties as has been prayed and recommended by the Jail Superintendent.

**Sd/-
(GOUTAM BHADURI)
JUDGE**

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