

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 124 of 2018

Khoman Sharma, S/o. Keshar Prasad Sharma, Aged About 43 Years, Prisoner No. 3479/18, Presently Under Going Correctional Imprisonment In Central Jail Durg, Civil & Revenue District Durg, Chhattisgarh.

R/o. Village Padampur, P.S. Sihava, District Dhamtari Chhattisgarh

Represented Through- Bedan Prasad Sharma, S/o. Keshar Prasad Sharma, R/o. Qtr. No. E/26, New Public Line, Behind Central Jail, Durg, District Durg Chhattisgarh.

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Versus

1. State Of Chhattisgarh, Through the Secretary, Department Of Home (Jail), Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur Chhattisgarh.
2. The District Magistrate, Dhamtari, District Dhamtari Chhattisgarh.
3. The Jail Superintendent, Central Jail, Durg, District Durg Chhattisgarh.
4. The Superintendent Of Police, Dhamtari, District Dhamtari Chhattisgarh.
5. Deputy Collector, Dhamtari, District Dhamtari Chhattisgarh.

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For Petitioner	:	Shri Amiyakant Tiwari, Advocate
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For Respondents/State	:	Shri Ghanshyam Patel, Govt. Advocate
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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08.01.2019

1. The present petition has been filed invoking the provisions of Article 226 of the Constitution of India seeking direction to the Respondents to release the petitioner on parole.
2. It is contended by the petitioner that on right to information, it revealed that the application filed under Rule 6 (B) of the Prisoners Leave Rules, 1989 (*for short "Rules, 1989"*) for release of the petitioner on parole has been dismissed assigning the reason that the release of the petitioner may cause serious threat to the society as the petitioner was convicted for life under Section 302 of I.P.C. for killing his wife. It is contended that the rejection of

application for release of the petitioner on parole at the threshold without any application of mind and the reasons which have been assigned do not find place in Rule 4 & 6 of the Rules, 1989. Therefore, the respondents are required to adhere to strict compliance of the Rules and decide the case of the petitioner as per Rule 6 of the Rules, 1989.

3. Perused the reply of the State.
4. 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.”

5. If we take into consideration the Note attached 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 satisfied 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. Further perusal of Rule 6 also clearly depicts that before the District Magistrate takes a decision on the application for grant of temporary leave he has to consult the District Superintendent of Police who in turn has to obtain the opinion of the Gram Panchayat of the village where the prisoner resides.

6. 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.”

7. Similar matter had come up before the Madhya Pradesh High Court in 2002 and relying upon the aforesaid judgment of the Supreme Court, the Madhya Pradesh High Court in the case of ***Jeevan Singh Verma Vs. State of M.P. & Others, 2002 (1) M.P.L.J. 347***, Hon'ble Justice Dipak Misra, as he then was, while deciding the case after referring to the provisions of the Prisoners Act held as under :

“7. Now the question that falls for consideration is whether the petitioner should be granted the benefit of parole or temporary release. In this context I may profitably refer to the decision rendered in the case of *Inder Singh and Anr. v. The State (Delhi Administration)* 1978 SCC (Cri) 564 wherein their Lordships emphasized on rehabilitation and quoted a passage from Lewis Moore with approval. The said passage reads as under :

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I

myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation? No.! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him."

In the aforesaid case the Apex Court laid emphasis on the concept of 'Karuna' and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness. To quote

"parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up."

Thus parole has been treated as a curative strategy keeping in view the human dignity which is the quintessence of Article 21 of the Constitution.

8. The facts of the present case have to be judged on the basis of aforesaid enunciation of law. By the impugned order the District Magistrate has concurred with the opinion of the Superintendent of Police and rejected the prayer for temporary release. The reason ascribed is that the petitioner is likely to commit similar nature of offence. It is not shown on what foundation such an opinion has been expressed. It is not reflected in the impugned order that the convict has any criminal antecedent or has been a drug peddler. The order does not indicate that the convict was a member of any organized group involved in the transaction. The convict is the only son and his mother is ill. In support of the illness of the mother Annexure P-2 has been brought on record. Refusal to grant parole or temporary release on a spacious plea that he will get himself involved in similar nature of crime, without indicating any kind of antecedent or any other essential facts is likely to cause trauma in a prisoner which is against the curative measure. Thus I am of the considered opinion that the order passed vide Annexure P-1 is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of this Court and I so do. Consequently it is directed that the respondents shall extend the privilege of temporary release/parole as per law to the son of the petitioner."

8. In light of the aforesaid discussions in the given facts and circumstances of the case, the document would reveal that on 17.08.2017 recommendation of the Jailer for parole was forwarded to the S.P. and S.P. in turn sought for report to the concerned S.H.O. on 11.09.2017 and

the S.H.O. by its letter dated 29.09.2017 has assigned the reason that the petitioner may not be released for the fact that he has been convicted for killing of his wife and if he is released, he may commit severe crime again which may cause fear in the public of the village Padampur, P.S. Sihava. On what foundation, the said report has been made is not clear. It has not been shown that the petitioner was a member of an organized criminal group involved in some crime and in alternate if the parole is allowed the family ties are maintained. The family members have given undertaking that they will take care and will ensure all safety of public if he is released on parole. Under the circumstances, the rejection of parole application by District Magistrate on the basis of ground assigned by S.P. cannot be sustained. It is therefore directed that the District Magistrate shall decide the parole of the petitioner considering the spirit of Rule 6 of the Rules, 1989 and the object behind it and shall not be influenced by the opinion of the S.P. which has been forwarded. The said decision may be given within a further period of 45 days from the date of receipt of a copy of this order and in order to decide the same, the District Magistrate may conduct fresh enquiry which fall in line to the legislative intent of Rule 6 of Rules, 1989.

9. In view of the above, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

ashok