

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 226 of 2019

Rahul @ Krishnadas @ Lala Vaishnav S/o Late Shri Ghasidas Vaishnav
 Aged About 56 Years R/o Pali, Police Station - And Tahsil Takhatpur,
 District Bilaspur Chhattisgarh, Present Address Imalibhatha, Quarter No. B-
 38, Bandhawapara, Police Station - Sarkanda, District Bilaspur
 Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home (Jial)
 Depaertment, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
2. The Director General Of Prisons And Correctional Service
 Chhattisgarh. Head Quarter Prisons And Correctional Service
 Chhattisgarh, Raipur Chhattisgarh.
3. The Collector Cum District Magistrate Bilaspur Chhattisgarh.
4. The Executive Magistrate Bilaspur District Bilaspur Chhattisgarh.
5. The Superintendent Of Police Bilaspur Chhattisgarh.
6. The Jail Superintendent Central Jail Bilaspur Chhattisgarh.
7. The Station House Officer Police Station Sarkanda, District Bilaspur
 Chhattisgarh.

---- Respondents

For Petitioner	:	Mr.R.R.Soni, Advocate
For State/Respondents :		Mr.Ghanshyam Patel, G.A.

SB : Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/05/2019

1. An application for parole filed by the Petitioner/Convict has been
 rejected by the learned Executive Magistrate on behalf of the District

Magistrate stating that the Superintendent of Police had not recommended his release on parole, against which writ petition has been preferred.

2. I have heard learned counsel for the parties and considered the rival contentions and gone through the records of the case.
3. Before examining the propriety of the order impugned, it is necessary to examine the Rules, known as Chhattisgarh Prisoner's Leave Rules, 1989 framed in exercise of the powers enumerated by Section 31 of the Prisoner's Act, 1900 (No.III of 1900). Rules 4, 5 and 6 of the said Rules, 1989 are relevant for the purpose, therefore, reproduced herein as under:

“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 fulfils 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. Application for Grant of Leave.--- (a) Request from prisoners for leave, under Section 31-A of the Act, shall be made in writing in Form 'F' to the Superintendent of the Jail (hereinafter called Superintendent) at the parade on Monday.

(b) The Superintendent shall personally examine the records of the prisoner making the request for leave and satisfy himself that the prisoner fulfills the conditions for grant of leave.

(c) If the prisoner fulfills the conditions of the leave, the Superintendent shall report the first request of

the prisoner to the District Magistrate of the concerning district where the prisoner resided before conviction.

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 sent to the District Magistrate alongwith 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 concerning District Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

(b) If the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected."

4. In accordance to the aforesaid Rules, the District Magistrate is required to be satisfied that prisoner's release would not be detrimental to the public interest as provided under clause (c) thereof. The satisfaction of the District Magistrate is condition precedent for grant of leave to the prisoner.

5. In the instant case, the District Magistrate has not applied his mind to the requirement of Rules 4 to 6 for grant of release of the Petitioner on parole and simply on the basis of recommendation of the Superintendent of Police, his application for grant of parole has been rejected, which is impermissible in law. Impugned order dated 22.09.2016 passed by the Executive Magistrate on behalf of District Magistrate is hereby set aside. Case is remitted to the said authority for considering the said application strictly in accordance with the law within a period of 10 days from the date of receipt of a copy of this order and pass a reasoned speaking order and communicate to the Petitioner accordingly.
6. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the District Magistrate, Bilaspur by E-mail/fax.

Sd/-

(Sanjay K. Agrawal)
Judge