

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 253 of 2019

- Tahalram S/o Mohanlal Sahu Aged About 45 Years Convict No. 8472/112, 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 Superintendnet, Central Jail Raipur, District- Raipur, Chhattisgarh.
3. Superintendent Of Police, Dhamtari, District- Dhamtari, Chhattisgarh.
4. Collector, Dhamtari, District- Dhamtari, Chhattisgarh.
5. Deputy Collector, Dhamtari, District- Dhamtari, Chhattisgarh.
6. Thana In-Charge, Police Station Bhakhara, District- Dhamtari, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Kishore Narayan, Advocate
For Respondent/State	: Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

28/08/2019

Heard.

1. The present petition is against the order dated 30.7.2018 passed by the respondent No.5 rejecting petitioner's application filed for releasing him on parole.
2. It is submitted that the petitioner is the life convict and he is undergoing sentence in jail. The petitioner submitted an application in the

prescribed format for grant of parole as per provisions of the Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989). Said application of the petitioner has been rejected by respondent No.5 vide order dated 30.7.2018 on the ground that the Superintendent of Police, Dhamtari has not recommended the case of petitioner for grant of parole. It is submitted that after completion of prescribed period of jail sentence, the petitioner has become entitled for benefit of release on leave under the Rules, 1989 and therefore it is prayed that appropriate direction may be issued to the respondent authorities concerned for release of the petitioner on leave/parole

3. Counsel for the respondents/State submits that petitioner is a convict of heinous offence of murder. His application for leave has been rejected on reasonable grounds, particularly the fact that earlier when the petitioner was released on parole leave, he absconded and was nabbed by the police. The circumstance that are present at the relevant time are still existing, therefore, the petitioner is not entitled for any relief.
4. I have heard the learned counsel for the parties and perused all the documents placed on record.
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 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 therefore, under no other circumstances can the leave be refused as a matter of routine without cogent reasons. In this particular case, the subsequent application for grant of leave is governed by Rule 8 which is as under:

“[a] Once the prisoner has availed of the leave, the Inspector General of prisons(hereinafter) called Inspector General) shall be competent to grant leave as per rule subsequently on fulfillment of the conditions laid down in rule-4.

(b) Request by the prisoner for subsequent leave shall be made in the same manner as in the first leave.

(c) If the examination of the records of the prisoner shows that the prisoner is eligible for subsequent leave, the Superintendent of the jail shall obtain the enquiry report of the Probation Officer/Welfare Officer concerned and thereafter shall send the case to the Inspector General.

(d) On receipt of the case from the Superintendent of Jail, the Inspector General shall pass such orders

as he may consider necessary.

(e) The prisoner whose leave is sanctioned by the Inspector General shall be granted a release order in Form'B'."

7. The report has been given by the Station House Officer of the police station concerned stating that on earlier occasion the applicant had breached the terms of leave and had absconded. There is no such condition laid down in Rule 8 that because of earlier absconsion the prisoner shall not be entitled for subsequent leave. Further, there is provision under Rule 11 to deal with the situation, if any, prisoner breaches the condition of release or he absconds, hence, it cannot be made a ground to reject the application for grant of temporary leave.

8. 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."

9. In case of ***Baradakanta Mishra, Ex-Commissioner of Endowments Vs. Bhimsen Dixit***, reported in ***(1973) 2 S.C.R. 495***, it was held that contempt of Court is disobedience to the Court, by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. It has further been held that it is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the

Rule of Law and engender harassing uncertainty and confusion in the administration of law.

10. Considering the principles laid down in the Act by the Courts of law and the fact that the petitioner in jail since the year 2000, therefore, in the opinion of this Court, denial of parole to the petitioner merely for the reason that earlier he had absconded parole is not sustainable and liable to be set aside. The maintenance of law and order situation and to ensure safety of the involved family is the responsibility of the State.
11. Accordingly, the impugned order dated 30.7.2018 is hereby set aside and it is directed that the petitioner be released on parole for the period prayed by the petitioner from the date of his release, after compliance of surety etc. which has been normally followed. The petitioner is directed to report back to the Central Jail, Bilaspur after availing the parole. In case, the petitioner fails to surrender immediately after expiry of stipulated period, the jail authorities shall immediately inform the concerned Magistrate for procuring his arrest.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha