

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 581 of 2017

Lata Kashyap, D/o. Dayaram Varsaged, Aged About 39 Years, R/o. Gokul Nagar, Bhanpuri, Ring Road No. 2, Police Station Khamtarai, District Raipur Chhattisgarh. Through : Vishnu Ram Sahu, S/o. Late Seeta Ram Sahu, Aged About 47 Years, R/o. 813, Banjari Nagar, Ramabhata, Police Station Khamtarai, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Its, Principal Secretary, Department of Home Jail, Mantralya, Mahanadi Bhavan, Naya Raipur, District Raipur Chhattisgarh.
2. The Jail and Correctional Services Chhattisgarh, The Director General Prisons, Jail Road Raipur, District Raipur Chhattisgarh.
3. Board Constituted under Rule 6(5) of the C. G. Prisoners Release On Probation Rules 1964, Through Its, Chairman, Department of Home, Mantralay, Mahanadi Bhavan, Naya Raipur, District Raipur Chhattisgarh.
4. The Director General, Jail and Correctional Services Chhattisgarh, District Raipur Chhattisgarh.
5. The Jail Superintendent, Central Jail Raipur, District Raipur Chhattisgarh.
6. The District Magistrate, Raipur, District Raipur Chhattisgarh.
7. The Superintendent of Police Raipur, District Raipur Chhattisgarh.

-----Respondents

For Petitioner : Mr. Sunil Pillai, Advocate

For Respondent/State : Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

22/08/2019

1. The instant petition under Article 226 of Constitution of India has been filed for issuance of appropriate direction.
2. It is submitted that the petitioner is life convict under going sentence in jail. She has undergone more than 8 years and four months in jail on March, 2016 without remission, therefore, she has become entitled to be release on probation/license under the provisions of C.G. Prisoners Release on Probation Act, 1954 and Rules, 1964 for the reasons that she has under gone more than 1/3 of the sentence of imprisonment/ total period of five years without remission. On the basis of entitlement, the petitioner preferred an application under Rule 6 of C.G. Prisoners Release on Probation Rules, 1964 (in Short Rules, 1964), before the respondent No.5, which was forwarded to the respondent No.6 and after consulting the respondent No.7, the application was forwarded to the respondent No.4. There had been no objection regarding the release of petitioner on probation/license. The application of the petitioner has been arbitrarily rejected by the respondent No.3 without application of mind by passing a cyclostyle order, which is an erroneous order. It is submitted that petitioner has peacefully served the sentence of imprisonment in full obedience to the rules and regulations and there is no adverse record against her. It is also submitted that the petitioner had been on bail after suspension of sentence and grant of bail during the pendency of criminal appeal in the High Court for about period of 9 years, therefore, the petitioner is eligible and entitled for release on probation. She is not a convict in the clause of prisoner, who shall not be released as provided under Rule 3 of Rules, 1964. The petitioner fulfills all the criteria for her release on probation. Relying on the judgment of Supreme Court in **Arvind Yadav**

Vs. Ramesh Kumar & Ors. reported in ***(2003) 6 SCC 144***. It is prayed that petition be allowed.

3. State counsel opposes the petition and submits that when the matter was placed before the respondent No.3, it was observed that the petitioner has committed the offence under Section 302/34 read with Section 201/34 of the Indian Penal Code by committing murder of her husband for the reasons that she had some illicit relation, therefore, her crime is heinous in nature, hence for this reason, it was not recommended for her release. There is no illegality or infirmity on the order passed by the respondent No.3. Further after dismissal of the application of the petitioner, the petitioner has entitlement to file repeat application after two years and that two years have passed, therefore, this petition is not maintainable, which may be dismissed.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. The petitioner had filed application on 25.01.2016 vide Annexure P-1 in which her release was recommended by Jail Superintendent i.e. the respondent No.5. The District Magistrate, respondent No.6 has as well granted NOC for her release on probation vide Annexure R-1. The reasons for not recommending the petitioner to be released on probation is mentioned that the petitioner had illicit relation with some other person because of which she in collaboration with co-accused had assaulted her husband, the deceased with Axe and knife, thus causing his death, which is heinous offence committed in brutal manner. The petitioner does not fall any of the category that has been mentioned in Rule 3 of Rules, 1964, however, the legibility for release, which is described under Rule -4 is as under :-

“4. **Eligibility for release.** Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years [without remission], whichever is less, may be released by the Government on licence.

[Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No. 45 of 1860) or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence :

Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission in sentence :

Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds].”

6. The first part of Rule 4 is enabling provision, whereas, the proviso is disabling provision in which it is very clearly mentioned that if the person is sentenced for life imprisonment under Section 302 and under this provision death sentence is also one of the punishment in such case if an application is filed under reference to first part of Rule 4 of Rules, 1964 shall be considered as premature. The entitlement for

release which is mentioned in the initial part of Rule 4 of Rules, 1964 is governed by proviso clause. The case of the petitioner falls under second proviso as she is undergoing life sentence and her application for release on probation shall be considered only after she has undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission.

7. According to the facts presented, the petitioner has undergone more than 7 years in jail without remission and further reasons for rejection of her application is not mentioned as non-entitlement of the petitioner.
8. It has been observed by the Supreme Court in *Arvind Yadav Vs. Ramesh Kumar & Ors.* (*supra* in paragraph 6 & 7, which reads as under :-

“6. We are unable to sustain the impugned judgment of the High Court. Each of the convicts before the High Court had been found guilty of commission of serious crime. The impugned judgment notices that offences against the convicts were under [Sections 302, 307, 394, 304B, 498A, 325](#) of the Indian Penal Code and the convicts were serving their respective sentences in jail. In all the cases before the High Court, the recommendations of the Probation Board that had been accepted by the State Government were against the release of the convicts. If there was non-application of mind to the relevant considerations, the appropriate course was to remand the case for fresh decisions by the authorities except, if in a given exceptional case, for strong cogent reasons, the High Court may have examined itself the relevant facts and quashed the order declining the release. The High Court instead of adopting this course, has made a general observation that the remand to State Government for fresh consideration is bound to delay the matter causing further

injustice to the convicts.

7. Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefensible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra son of Shashi Mohan Yadav on 20th September, 1994 in Hoshangabad, Madhya Pradesh causing 17 injuries on him with swords, knivas and gupti and that Ramesh Kumar was the accused in 14 cases filed under various sections [of the Indian Penal Code](#). The manner of Commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be good sole ground to decline the licence to release. The Rules provide for detailed procedure for consideration of application for release. Once rejected, again application of release can be made after two years. The Board comprises of Home Secretary of State Government or any other empowered officer, I.G. of Prisons or Deputy I.G. and another member.”

9. On the basis of the observations made by the Supreme Court in *Arvind Yadav Vs. Ramesh Kumar & Ors.* (supra), the facts of this case are

taken into consideration. Her application was rejected only for the reason that the deceased was done to death by use of sharp edge weapon inflicting injuries on his body. The offence may appear to be brutal, it can not be made sole ground to decline the release on probation. There is no such fact present that the petitioner is having any criminal antecedents or there is any possibility, that she may further commit any crime. Reason for commission of crime is specifically mentioned that the petitioner had some illicit relation with some other person which lead to the commission of offence for murder of her husband. The respondents No.4, 5, 6 and 7 have recommended for release of the petitioner on probation and the reasons which the respondent No.3 has mentioned for rejecting the petitioner's application, does not appear to be convincing, hence, for this reason and on the basis of the discussion made as aforesaid, I am of this view that the petition can be disposed off with appropriate direction.

10. The petition is disposed off with a direction that the recommendation made by the respondent No.3 vide Annexure P-3 is hereby set-aside and the respondent No.3 is directed to consider and decide afresh the application of the petitioner for her release on probation/licence on the basis of the observations made by this Court herein above.

Sd/-
(Rajendra Chandra Singh Samant)
Judge