

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 409 of 2018

Tukeshwar, S/o. Umendra Singh, Aged About 35 Years, R/o. Village Daargaon, P.O. and P.S. Bagbahara, District Mahasamund, Chhattisgarh. Through : Dhaan Bai, W/o. Umendra Singh, Aged About 60 Years, R/o. Village Daargaon, P.O. and P.S. Bagbahara, District Mahasamund, Chhattisgarh.

Through : Dhaan Bai, W/o. Umendra Singh, aged about 60 years, R/o. Village- Daargaon, P.O. & P.S. Bagbahara, District – Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Its Principal Secretary, Department of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Jail and Correctional Services Chhattisgarh, The Director General Prisons, Jail Road Raipur, District Raipur, Chhattisgarh.
3. The Jail Superintendent Central Jail Raipur, District Raipur, Chhattisgarh.
4. The District Magistrate, Mahasamund, District Mahasamund, Chhattisgarh.
5. The Superintendent of Police, Mahasamund, District Mahasamund, Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Sunil Pillai, Advocate
For Respondent/State	: Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/07/2019

Heard.

1. The present petition is against the order dated 27.03.2018, passed by the District Magistrate, Mahasamund, whereby the application for release of the petitioner on parole has been rejected.
2. It is submitted that the petitioner is life convict and he is undergoing sentence in jail. After completion of four years in jail, he has become entitled for benefit of release on leave under Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989). On this basis,

the application for grant of leave was filed by the applicant, which was not considered by the respondents. The petitioner was then compelled to file W.P.(Cr.) 30/2018 before this Court in which order dated 21.02.2018 was passed and issued direction to the District Magistrate to decide the application of the petitioner for grant of temporary release. The District Magistrate i.e. respondent No.4 has rejected the application for leave of the petitioner vide Annexure P-2 by order dated 27.03.2018. The petitioner then filed a contempt petition, which was registered as Contempt Petition No.414/2018 and thereafter, he has withdrawn the same and filed this petition in second round. It is prayed that appropriate directions may be issued to the respondents for release on leave of the petitioner.

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 earlier. The circumstance that are present at the 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. 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 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 Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

7. In the light of the aforesaid principles, if the order dated 27.03.2018 is perused along-with the documents filed along-with the return, the reasons assigned for rejection on parole is not supported by the principles laid down.
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 reasons assigned and the principles laid down in the Act by the different Court, in the opinion of this Court, an application for parole cannot be rejected in the facts of this case for all the time. Accordingly, it is directed that the petitioner may be released on parole as has been applied for a limited period according to the application after compliance of surety which has been normally followed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge