

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 547 of 2019

Sewak Singh, S/o, Shri Ramsingh Gond, Aged About 28 Years, R/o. Village-Pandri, Police Station- Marwahi, District- Bilaspur (C.G.).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : The Secretary, Home (Jail) Department, Mantralaya, Mahanadi Bhawan, Raipur (C.G.).
2. The Director General of Prisons and Correctional Services Chhattisgarh, Head Quarter - Prisons and Correctional Services Chhattisgarh, Raipur (C.G.).
3. The Collector - Cum - District Magistrate, Bilaspur (C.G.).
4. The Executive Magistrate, Bilaspur (C.G.).
5. The Superintendent of Police, Bilaspur (C.G.).
6. The Jail Superintendent, Central Jail Bilaspur (C.G.).

-----Respondents

For Petitioner	: Mr. Rishi Rahul Soni, Advocate
For Respondent/State	: Mr. Shubhash Yadav, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/07/2019

Heard.

1. The present petition is against the order dated 27.05.2019, passed by the Collector-cum-District Magistrate, Bilaspur, 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 petitioner filed an application before the Collector-Cum-District Magistrate, Bilaspur, but the same was cursorily rejected by the respondent No.3 vide order dated 22.09.2016 (Annexure P/6). The

petitioner then challenged the same order before this court in W.P.(Cr.) 180 of 2019. This petition was disposed off on 06.05.2019 by setting aside the order dated 22.09.2016 of the respondent No.3 by issuing a direction for considering the application strictly in accordance with the law within a period of 10 days from the date of receipt of a copy of the order and pass a reasoned speaking order and communicate the petitioner accordingly. It is further submitted that subsequent to passing of this order, respondent No.3 has rejected the prayer made by the petitioner by the impugned order dated 27.05.2019. It is submitted that from perusal of the said order, it can not be said that the order has been passed in accordance with law. Though it is a speaking order making reference to the report of Superintendent of Police and other enquiry made in this respect, but there is no reference to the rules and law applicable. Therefore, on this basis, it is prayed that the petitioner be granted appropriate relief.

3. Counsel for the respondents/State opposes the petition submitting that the respondent No.3 has complied with the order dated 06.05.2019, passed by this Court in W.P.(Cr.) 180 of 2019 by passing speaking order, therefore, the grievance raised by the petitioner is not fit to be entertained.
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 concerned 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 27.05.2019 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, the impugned order dated 27.05.2019 is set-aside for the reason that it is not in accordance with law and 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