

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 543 of 2019

- Jalindhar Singh Rathia S/o Chamar Singh Rathia Aged About 48 Years (Now 60 Years) Occupation Agriculturist , R/o Village Kapamar (Darripara) Chowki Jobi, Police Station And Tahsil Kharsiya, District Raigarh Chhattisgarh. Through Ram Kanwar, W/o Jalindhar Singh Rathia, Aged About 59 Years, R/o Village Kapamar (Darripara) , Chowki Jobi, Police Station And Tahsil Kharsiya, District Raigarh Chhattisgarh.

---- 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 Bilaspur District - Bilaspur Chhattisgarh.
4. The District Magistrate Raigarh, District Raigarh Chhattisgarh.,
5. The Superintendent Of Police , Raigarh, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Manoj Kumar Jaiswal, Advocate
For Respondent/State	: Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

29/07/2019

Heard.

1. The present petition is against the order dated 7.4.2017, passed by the District Magistrate, Raigarh, whereby the petitioner's application for releasing him 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 the Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989). On this basis, the application for grant of leave was filed by the petitioner, which was not considered by respondent No.4. It is, therefore, prayed that appropriate direction may be issued to the respondent authorities 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. 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. 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 ***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.”

8. 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.

9. Considering the reason assigned in the order impugned and the principles laid down in the Act by the Courts of law, in the opinion of this Court, denial of parole to the petitioner only on the basis of recommendation of the Superintendent of Police that the law and order problem will be created in the event of release, is not justified. To maintain law and order situation, the Superintendent of Police is under obligation to perform his duties and on the ground that convict can disturb the peace, parole cannot be rejected. Accordingly, the impugned order dated 7.4.2017 is hereby set aside and it is directed that the petitioner be released on parole for a period of 20 days after compliance of surety which has been normally followed. The petitioner is directed to report back to the Central Jail, Bilaspur after availing 20 days parole.

Sd/-

(Rajendra Chandra Singh Samant)
Judge