

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 445 of 2018**

- Sanjay Kumar Shrivastava S/o Narayan Shrivastava Aged About 23 Years R/o Village Kotetara, Post Kotetara, Police Station Jaijapour District Janjgir Champa Chhattisgarh. Through Narayan Shrivastava, S/o Late Ramratan Shrivastava, aged about 55 years, R/o Village Kotetara, Post Kotetara, Police Station Jaijapour District Janjgir Champa 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 Janjgir Champa District Janjgir Champa Chhattisgarh
5. The Superintendent Of Police, Janjgir Champa District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner : Shri Sunil Pillai, Advocate

For Respondent/State : Shri V.A. Goverdhan, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****22/01/2019**

1. Heard.
2. The present petition is against the order dated 04.08.2018, passed by respondent No.4, the District Magistrate, Janjgir-Champa, wherein the

application to release the petitioner on parole was refused. The ground which is been stated in such communication made to the Superintendent of Jail, Central Jail, Bilaspur that release of the petitioner may lead to breach of peace as has been expressed by the SHO of Police Station Jaijaipur.

3. Learned counsel for the petitioner submits that Rule 6 of the Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989) and the note appended thereto would show that only in cases when the release of prisoner is fraught with the danger to the public safety, the District Magistrate may refuse to grant leave and the ground of rejection which has been stated that the petitioner may abscond is not embodied in Rule 6 of the Chhattisgarh Prisoners Leave Rules, 1989. He submits that in such case if it is felt by the District Magistrate that the petitioner may abscond, he may take back the surety. He further submits that the reply of the State would shows that the villagers as also the surety of the village, wherein the petitioner used to stay have given a consent for release of the petitioner and no objection was filed by the Sarpanch, Up-sarpanch and the villagers etc. He further submits that the sureties namely Thanda Ram Sahu and Dorilal have also given the surety that the petitioner may be released, however, one Shobha Sahu, the one of the relatives of the victim has objected and only on that basis the request for release to the petitioner on parole was rejected, it is not supported by the law.
4. Per contra, learned State counsel opposes the arguments.
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 said 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 is felt that the release of the prisoner is fraught with danger to the public safety and 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. Similar matter had come up before the Madhya Pradesh High Court in 2002 and relying upon the aforesaid judgment of the Supreme Court, the Madhya Pradesh High Court in the case of **Jeevan Singh Verma Vs. State of M.P. &**

Others, 2002 (1) M.P.L.J. 347, Hon'ble Justice Dipak Misra, as he then was, while deciding the case after referring to the provisions of the Prisoners Act held as under :

"7. Now the question that falls for consideration is whether the petitioner should be granted the benefit of parole or temporary release. In this context I may profitably refer to the decision rendered in the case of *Inder Singh and Anr. v. The State (Delhi Administration)* 1978 SCC (Cri) 564 wherein their Lordships emphasized on rehabilitation and quoted a passage from Lewis Moore with approval. The said passage reads as under :

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation? No.! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him."

In the aforesaid case the Apex Court laid emphasis on the concept of 'Karuna' and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness. To quote

"parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up."

Thus parole has been treated as a curative strategy keeping in view the human dignity which is the quintessence of Article 21 of the Constitution.

8. The facts of the present case have to be judged on the basis of aforesaid enunciation of law. By the impugned order the District Magistrate has concurred with the opinion of the Superintendent of Police and rejected the prayer for temporary release. The reason ascribed is that the petitioner is likely to commit similar nature of offence. It is not shown on what foundation such an opinion has been expressed. It is not reflected in the impugned order that the convict has any criminal antecedent or has been a drug peddler. The order does not indicate that the convict was a member of any organized

group involved in the transaction. The convict is the only son and his mother is ill. In support of the illness of the mother Annexure P-2 has been brought on record. Refusal to grant parole or temporary release on a spacious plea that he will get himself involved in similar nature of crime, without indicating any kind of antecedent or any other essential facts is likely to cause trauma in a prisoner which is against the curative measure. Thus I am of the considered opinion that the order passed vide Annexure P-I is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of this Court and I so do. Consequently it is directed that the respondents shall extend the privilege of temporary release/parole as per law to the son of the petitioner."

9. In the matter of **State of Gujarat and another v. Lal Singh alias Manjit**

Singh and others (2016) 8 SCC 370, the Supreme Court at para 33 has laid

down the scope of jurisdiction while granting temporary parole, the same is

reproduced as under: -

"33. So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In *Sunil Fulchand Shah v. Union of India* (supra) the Constitution Bench while dealing with the grant of temporary release or parole under Sections 12(1) and Section 12(1-A) of the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu."

10. In view of the aforesaid principles laid down by the various courts along with the

statement, the ground of rejection if are read together, it would show that the ground of rejection do not fall within the four corners of the principles and statement as envisaged aforesaid. The record would show that the villagers have given the consent which includes the Sarpanch, Up-sarpanch and different villagers that the petitioner may be released for a temporary period and two sureties namely Thanda Ram Sahu and Dorilal have also stated that in case the petitioner is released they will stand surety. It is only on the statement of Shobha Sahu W/o Hotaram Sahu, the release has been objected. She appears to be the relative of the victim. The statement if is perused, it shows that it has been stated that if the petitioner is released he may again extend threat to them when is on leave. The said statement if considered in the light of the aforesaid principles, the same cannot be a ground for rejection of parole. Under the circumstances, this Court is of the opinion that the order passed by the District Magistrate, Janjgir-Champa dated 04.08.2018 is set aside. The petitioner is directed to be released on parole according to the recommendation by the Jail Superintendent. The District Magistrate may further prescribe the condition and terms of on which the parole to be availed by the petitioner.

Sd/-

Goutam Bhaduri
Judge

Ashu