

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 495 of 2018

Rupesh Nirmalkar S/o Budharu Nirmalkar Aged About 30 Years R/o Bhakhara, P.S. Bhakhara, Tahsil Kurud, District Dhamtari Chhattisgarh through Surendra Kumar Nirmalkar, S/o Budharu Nirmalkar, Aged About 28 Years, R/o Bhakhara, P.S. Bhakhara, Tahsil Kurud, District Dhamtari Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through its Principal Secretary, Department of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh., 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 Dhamtari, District Dhamtari Chhattisgarh.,
5. The Superintendent of Police Dhamtari, District Dhamtari Chhattisgarh.

---- Respondents

For Petitioner : Mr. Sunil Pillai & Mr. Sunil Verma, Adv.
For Respondents-State : Mr. Chandresh Shrivastava, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.03.2019

1. The present petition is against the order dated 07.03.2017 passed by Respondent No.4 the District Magistrate, Dhamtari wherein the application to release the petitioner on parole was rejected. The ground which has been stated is that the petitioner is involved in major crime, therefore, considering the gravity of commission of offence, it would not be proper to release him on parole.

2. Learned counsel for the petitioner would submit 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 since the petitioner is convicted for major crime it would not be proper to release the petitioner on parole cannot be sustained in view of Rule 6 of Rules, 1989. Counsel further submits that along-with reply, the statement of victim wife is also filed as also the statement of Meena Sahu, the councilor is filed which are without any material on record and simply there is an apprehension that the petitioner after his release on parole may again commit crime cannot be a ground of rejection. He further submits that however the said ground was not considered by the District Magistrate as the rejection of parole is only on the ground that he was involved in a major crime. He submits that the petition may be allowed and the petitioner may be released on parole.
3. Per contra, learned State Counsel opposes the arguments.
4. 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."

5. 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 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.

6. 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.”

7. 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."

8. In view of the aforesaid Rules and principles, when the reply of the State is perused, it shows that the Superintendent of Jail has recommended the petitioner for his release on parole as his conduct in jail is good. The order of conviction dated 13.03.2014 passed in Criminal Appeal No.691/2009 would show that over a land dispute the incident happened and thus the nature of commission of offence is apparent on record.
9. The wife of deceased in her statement has objected to the release of petitioner on parole for the reason that her husband Raju Prasad was murdered over a land dispute and further one Meena Sahu who is councilor of Ward No.15 has objected to release of the petitioner. The rejoinder of petitioner as well as two affidavits of proposed sureties Budhram and Gopal Das have been filed wherein they have stated that they are ready to stand as sureties if the petitioner is released on parole. Since the two sureties have

given their consent to stand as sureties, the reason as has been assigned by the S.H.O., P.S. Bhakhara for non availability of proper sureties stands explained. It is obvious that the victim's family shall always raise objection to release but in such case it has to be satisfied the principles and Rule 6 C.G. Prisoners Leave Rules, 1989. Only the objection raised by the victim's family cannot be made a ground for rejection qua the principles laid down by the Courts in *Dadu alias Tulsidas Vs. State of Maharashtra (supra)* and *State of Gujarat v. Lal Singh alias Manjit Singh (supra)*.

10. In view of the above discussion, the petition is allowed. It is directed that the petitioner shall be released on parole on furnishing two sureties as has been prayed and recommended by the jail superintendent. During the period of release the petitioner shall record his presence in the concerned Police Station twice with a gap of 5 days.

Sd/-
(GOUTAM BHADURI)
JUDGE