

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 718 of 2019

- Paras Ram S/o - Shri Samelal Gond Aged About 66 Years R/o - Village Baridih, Police Station Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

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

---- Respondent

For Petitioner	: Mr. Rishi Rahul Soni, Advocate
For Respondent/State	: Mr. Ghanshyam Patel, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

22/08/2019

Heard.

1. The present petition is against the order dated 27.3.2019, passed by the District Magistrate, Raigarh rejecting petitioner's application filed for releasing him on parole.
2. It is submitted that the petitioner is the life convict and he is undergoing

sentence in jail. On 1.1.2019, as per provisions of the Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989), the petitioner submitted an application in the prescribed format for grant of 12 days leave. Said application of the petitioner has been rejected by respondent No.3 vide order dated 27.03.2019 on the ground that the Superintendent of Police, Bilaspur has not recommended the case of petitioner for grant of regular first parole. It is submitted that perusal of the order passed by the respondent No.3 would reveal that basis for not recommending case of the petitioner for grant of parole has not been mentioned therein. Even it has also not been mentioned that on what ground, the Superintendent of Police has not recommended in the case of the petitioner. It is submitted that impugned order suffers from non-application of mind and therefore it is prayed that the impugned order may be quashed and petitioner be granted parole of 12 days.

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. Perusal of the impugned order passed by the respondent No.3 would reveal that application of the petitioner for grant of parole has been rejected only by mentioning that Superintendent of Police, Bilaspur has not recommended case of the petitioner, however, no reason whatsoever for that conclusion has been recorded therein. The aforesaid order, in the considered opinion of this Court, is based on non-application of mind and there is no concrete foundation for rejecting case of the petitioner for grant of parole.
10. Accordingly, the impugned order dated 7.4.2017 is hereby set aside and it is directed that the petitioner be released on parole for period of prayed for after compliance of surety etc. which has been normally followed. The petitioner is directed to report back to the Central Jail, Bilaspur after availing the parole. In case, the petitioner fails to surrender immediately after expiry of stipulated period, the jail authorities shall immediately inform the concerned Magistrate for procuring his arrest.

Sd/-

(Rajendra Chandra Singh Samant)
Judge