

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 552 of 2018**

Dilip Kol @ Tillu @ Dillu S/o Shri Sewadas Kol, aged about 22 years, R/o Choubepara, Pendra, Police Station Pendra, District Bilaspur, Chhattisgarh.

---- 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	:	Shri Rishi Rahul Soni, Advocate.
For Respondents	:	Shri Ghanshyam Patel, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

09/01/2019

1. The present petition is against the rejection of leave application for parole applied by the petitioner to release him for a period of 12 days.
2. Learned counsel for the petitioner submits that the petitioner is locked in jail since 07.11.2013 and he otherwise has completed the period for which the parole may be considered. Accordingly, he preferred an application for release on parole which was dismissed only on the ground by recording the statement of the relatives of the victim that the release may lead to law and order situation at the village for the reason the petitioner may further repeat the offence. It is contended by the petitioner that such ground of refusal did not find place in the Rule 4(C) of C.G.

Prisoners Leave Rules, 1989 (hereinafter referred to as 'Rules of 1989').

Therefore, the rejection of parole is not in conformity to the Rules of 1989 and the leave application of the petitioner may be allowed.

3. The State has filed its reply.

4. Perused the reply.

5. In the reply, the State has referred to the statement of one Chandramohan Rathore, father of the deceased Ganesh Prasad and another Gokul Rathore, relative of the deceased who have stated that if the petitioner is released on parole on leave, it will have adverse effect in the village and the petitioner may repeat the offence.

6. 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."

7. If we take into consideration the Note attached 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 satisfied 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. Further perusal of Rule 6 also clearly depicts that before the District Magistrate takes a decision on the application for grant of temporary leave he has to consult the District Superintendent of Police who in turn has to obtain the opinion of the Gram Panchayat of the village where the prisoner resides.

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. 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-1 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.”

10. In the light of the aforesaid principles laid down in the given facts, only because objection has been made by few of the relatives of the victim, the same cannot be used as a barrier to get a leave which is a right created under Section 4 and 6 of the Rules of 1989. On the contrary, the documents would reveal that the petitioner along with the application for leave has extended the guarantee of one Tulsi Ram and Mathura Prasad. They have stated that if the victim is released for a temporary leave then they will keep him under control and suriety was furnished. The report which has been before the District Magistrate though contain the apprehension that the petitioner on release may repeat his offence but what was the basis of it is not clear and it would be totally astronomical to hold so. The Rules of 1989 have been enacted with certain object and rejection on any ground which is not reasonable the object would be shelved under the circumstances, the petitioner is entitled to be released as per Rules of 1989.

11. Accordingly, the District Magistrate is directed to issue necessary release order granting leave to the petitioner for the period applied for. The Magistrate shall release the necessary order within a period of 15 days from the date of presentation of certified copy of this order.

12. The petition accordingly stands allowed.

Sd/-
(Goutam Bhaduri)
JUDGE