

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 803 of 2019

Bindeshwari Singh, S/o. Parsuram Singh, Aged About 56 Years, R/o. Village Banja, Police Station Surajpur, District - Surajpur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Its Principal Secretary, Department of Home (Jail) Mahanandi Bhawan, 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 Ambikapur, District - Surguja, Chhattisgarh.

-----Respondents

For Petitioner : Mr. Ashish Shukla, Advocate

For Respondent/State : Mr. C.B. Kesharwani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/09/2019

1. The instant petition under Article 226 of Constitution of India has been filed for issuance of appropriate direction.
2. It is submitted that the petitioner is life convict under going sentence in jail, passed in S.T. No.122/1994, vide judgment dated 17.08.2004 by the Fourth Additional Session Judge (FTC), Surajpur, District Surajpur

(C.G.) for the offence punishable under Section 302 of Indian Penal Code. He has undergone more than 14 years and 11 months in jail in August, 2019 without remission, therefore, he has become entitled to be release on probation/license under the provisions of C.G. Prisoners Release on Probation Act, 1954 and Rules, 1964 for the reasons that he has under gone more than 14 of the sentence of imprisonment without remission. On the basis of entitlement, the petitioner preferred an application under Rule 6 of C.G. Prisoners Release on Probation Rules, 1964 (in Short Rules, 1964), before the respondent No.3. According to Section 432 (2) of Cr.P.C., opinion was obtained from the Court of presiding Judge, Surajpur, District – Surajpur regarding release of the petitioner on remission and the learned District and presiding Judge has not accorded sanction for permanent release of the petitioner on remission vide its memo dated 08.10.2018 and vide impugned order dated 22.05.2019, the respondent No.1 has rejected the prayer for release of the petitioner on remission. The application of the petitioner has been arbitrarily rejected without application of mind. It is submitted that petitioner has peacefully served about 15 years sentence of imprisonment in full obedience to the rules and regulations and there is no adverse record against him. He is not a convict as mentioned in the clause of prisoner, who shall not be released as provided under Rule 3 of Rules, 1964. The petitioner fulfills all the criteria for her release on probation. Therefore, the petitioner is eligible and entitled for release on remission. Relying on the judgment of Supreme Court in ***Laxman Naskar Vs. State of W.B. and another***, reported in ***(2000) 7 Supreme Court Cases, 626***, it is prayed that petition be allowed.

3. State counsel opposes the petition and submits that according to Section 432 (2) of Cr.P.C., a report was obtained from the presiding Judge before whom the conviction was confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and the presiding Judge has not recommended the release of the petitioner on remission looking to the nature of offence committed by him. There is no illegality or infirmity on the order passed by the respondent No.1. Therefore, this petition is not maintainable, which may be dismissed.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. The petitioner had filed application for his release on remission. Upon application of the petitioner, according to Section 432 (2) of Cr.P.C., a opinion was obtained from the presiding Judge for release of the petitioner on remission. The presiding Judge has not recommended the release of the petitioner on remission looking to the gravity of the offence committed by him as he had been sentenced with life imprisonment. The petitioner does not fall any of the category that has been mentioned in Rule 3 of Rules, 1964, however, the legibility for release, which is described under Rule -4 is as under :-

“4. ***Eligibility for release.*** Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years [without remission], whichever is less, may be released by the Government on licence.

[Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No. 45 of 1860)

or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence :

Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission in sentence :

Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds].”

6. The first part of Rule 4 is enabling provision, whereas, the proviso is disabling provision in which it is very clearly mentioned that if the person is sentenced for life imprisonment under Section 302 and under this provision death sentence is also one of the punishment in such case if an application is filed under reference to first part of Rule 4 of Rules, 1964 shall be considered as premature. The entitlement for release which is mentioned in the initial part of Rule 4 of Rules, 1964 is governed by proviso clause. The case of the petitioner falls under second proviso as he is undergoing life sentence and his application for release on probation shall be considered only after he has undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission.

7. According to the facts presented, the petitioner has undergone more than 14 years in jail without remission and further reasons for rejection of his application is not mentioned as non-entitlement of the petitioner.
8. It has been observed by the Supreme Court in *Arvind Yadav Vs. Ramesh Kumar & Ors. (supra)* in paragraph 6 & 7, which reads as under :-

“6. We are unable to sustain the impugned judgment of the High Court. Each of the convicts before the High Court had been found guilty of commission of serious crime. The impugned judgment notices that offences against the convicts were under [Sections 302, 307, 394, 304B, 498A, 325](#) of the Indian Penal Code and the convicts were serving their respective sentences in jail. In all the cases before the High Court, the recommendations of the Probation Board that had been accepted by the State Government were against the release of the convicts. If there was non-application of mind to the relevant considerations, the appropriate course was to remand the case for fresh decisions by the authorities except, if in a given exceptional case, for strong cogent reasons, the High Court may have examined itself the relevant facts and quashed the order declining the release. The High Court instead of adopting this course, has made a general observation that the remand to State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts.

7. Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefensible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and

the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra son of Shashi Mohan Yadav on 20th September, 1994 in Hoshangabad, Madhya Pradesh causing 17 injuries on him with swords, knives and gupti and that Ramesh Kumar was the accused in 14 cases filed under various sections [of the Indian Penal Code](#). The manner of Commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be good sole ground to decline the licence to release. The Rules provide for detailed procedure for consideration of application for release. Once rejected, again application of release can be made after two years. The Board comprises of Home Secretary of State Government or any other empowered officer, I.G. of Prisons or Deputy I.G. and another member.”

9. On the basis of the observations made by the Supreme Court in *Arvind Yadav Vs. Ramesh Kumar & Ors.* (supra), the facts of this case are taken into consideration. The application of the petitioner was rejected only looking to the gravity of the offence committed. The offence may appear to be brutal, it can not be made sole ground to decline the release on probation. There is no such fact present that the petitioner is having any criminal antecedents or there is any possibility, that he may further commit any crime. The reasons rejecting the petitioner's application, does not appear to be convincing, hence, for this reason

and on the basis of the discussion made as aforesaid, I am of this view that the petition can be disposed off with appropriate direction.

10. Accordingly, the order passed by the respondent No.1 (Annexure P-1) is hereby set-aside and the respondent No.1 is directed to consider and decide afresh the application of the petitioner for his release on probation/licence on the basis of the observations made by this Court herein above.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram