

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 846 of 2019

- Raja @ Akash Sahu S/o Shivnarayan, Aged About 25 Years, Convict No. 2228/08, Lodged in Raipur Central Jail, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through : Secretary, Department of Home, Mahanandi Bhawan, Mantralaya, Atal Nagar, Naya Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Jail Superintendent Central Jail Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Superintendent of Police, Dhamtari, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
4. Collector, Dhamtari, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh
5. Deputy Collector, Dhamtari, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh
6. Thana In-Charge Police Station Arjuni, District Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh

-----Respondents

For Petitioner	: Ms. Rajni Soren, Advocate
For Respondents/State	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/09/2019

Heard.

1. The present petition is brought against the order dated 16.01.2019, passed by the Deputy Collector, Dhamtari, whereby the application for release of the petitioner on parole has been rejected.

2. It is submitted that the petitioner is a convict and he is undergoing sentence in jail. On the basis of his period of detention in jail, he has become entitled for benefit of release on leave under Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989). The application filed for grant of leave was dismissed by respondent No.4. It is prayed that appropriate directions may be issued to the respondents for release on leave of the petitioner.

Learned counsel for the petitioner placed reliance on the order dated 02.01.2019 passed by this Court in ***W.P.(Cr.) No.327 of 2018*** (Sanjay Mahant Vs. State of Chhattisgarh and others) wherein in para 12 it is observed that:-

12. Now, reverting back to the case in hand while keeping the aforesaid provisions in mind, it is evident from the order of the District Magistrate that no opinion as such has been formed before refusal of petitioner's application for grant of leave filed under Rule 5 of the Rules, 1989. Perusal of the enquiry as conducted by the Station House Officer as per the instruction would show that the concerned Gram Panchayat and the persons of the said vicinity have raised 'no objection' in order to release the petitioner as such in their statements, however, the relatives of the victim have raised their objection. But, a bare examination of the Rules, 1989, as framed, would, however, show that the objection of the relatives of the victim alone could not be ground for rejection of such grant. Normally, relatives of the victim would never give consent for his release for their emotional and sentimental reasons and that is the reason why the opinion of the District Magistrate based upon the said enquiry is needed for in order to ascertain as to whether release of the petitioner is detrimental to the public safety or not. However, no opinion as required mandatorily, in this regard, is formed by the District Magistrate before passing the order impugned. In such an eventuality, the order impugned cannot be held to be sustainable in law."

3. Learned State counsel opposes the petition and submits that taking into consideration the gravity of the offence committed by the petitioner, release of the petitioner was not recommended as it may lead to law and order problems.

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 is 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 concerned Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

7. In the light of the aforesaid principles, if the order dated 16.01.2019 is perused along-with the documents filed along-with the petition, the

reasons assigned for rejection on parole is not supported by the principles laid down.

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. Considering the reasons assigned and the principles laid down in the Act by the different Court, in the opinion of this Court, the application for parole cannot be rejected in the facts of this case. Accordingly, the order impugned dated 16.01.2019 passed by respondent No.4 is set-aside and it is directed that the petitioner may be released on parole as has been applied for a limited period according to the application after compliance of surety which has been normally followed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge