

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 944 of 2019

- Mrs. Neetu Balmiki, W/o Shri Manohar Balmiki, Aged About 32 Years
R/o Janakpur Ward, Tikrapara Kanker Post and Tahsil Kanker District
Uttar Bastar Kanker Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through its Secretary, Home Department
Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Collector Cum/and District Magistrate, District Uttar Bastar Kanker
Chhattisgarh.
3. Superintendent Of Police District Uttar Bastar Kanker Chhattisgarh.
4. Jail Suerintendent Central Jail Jagdalpur, Chhattisgarh.
5. Station House Officer Police Station Kanker Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Parag Kotecha, Advocate
For Respondent/State	: Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/09/2019

Heard.

1. The present petition is against the order dated 11.7.2019, passed by
the respondent No.2 rejecting the application filed for release
petitioner's husband on parole.
2. It is submitted that petitioner's husband is a life convict and he is
undergoing sentence in jail. The petitioner, as per provisions of the

Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to Rules, 1989), submitted an application in the prescribed format for grant of 12 days leave to her husband. Said application of the petitioner has been rejected by respondent No.2 vide order dated 11.7.2019 on the ground that the Superintendent of Police, North Bastar, Kanker has not recommended the case of petitioner for grant of regular parole. It is submitted that perusal of the letter dated 5.7.2019 written by respondent No.3 would reveal that reason assigned for not recommending case of the petitioner's husband for grant of parole is that it is a case of serious crime. It is submitted that merely because husband of petitioner is convict of an offence which is of serious nature would not be a ground to reject prayer of parole outrightly. It is further submitted that the purpose behind grant of parole is altogether different and therefore the nature of offence would be an irrelevant consideration. In these circumstances, it is prayed that the impugned order may be set aside and petitioner's husband be granted parole of 10 days.

3. Counsel for the respondents/State submits that petitioner is a convict of heinous offence of murder. His application for leave has been duly considered and rejected after finding that it was not recommended by the concerned Superintendent of Police. 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 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 ***Dadu alias Tulsidas Vs. State of Maharashtra, 2000 (8) SCC 437***, the Supreme Court while dealing with the issue of grant of parole has 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.2 would reveal that application of the petitioner for grant of parole has been rejected only by mentioning that Superintendent of Police, North Bastar Kanker has not recommended case of the husband of 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's husband for grant of parole.
10. Accordingly, the impugned order dated 11.7.2019 (Annexure P-4) is hereby set aside and it is directed that the petitioner's husband namely Manohar Balmiki (Prisoner No.7017/38 of Central Jail, Jagdalpur) be released on parole for period of 10 days after compliance of surety etc. which has been normally followed. Prisoner Manohar Balmiki is directed to report back to the Central Jail, Jagdalpur after availing the parole. In case, he 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