

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 619 of 2018**

- Mohan S/o Late Malik Ram Aged About 51 Years R/o Village Uraiha Police-Station Pamgarh, District- Janjgir-Champa, Chhattisgarh.....(In Jail)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Home Department (Jail) Department, Mantralaya Mahanadi Bhawan, New Raipur, Police Station- Rakhi, District- Raipur, Chhattisgarh
2. The Jail Superintendent Central Jail Bilaspur District- Bilaspur, Chhattisgarh
3. The District Collector Janjgir-Champa, District- Janjgir-Champa, Chhattisgarh
4. The Superintendent Of Police Janjgir-Champa, District- Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner : Shri Ravi Maheshwari, Advocate

For Respondent/State : Shri Akash Pandey, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/03/2019**

1. Heard.
2. The present petition is for grant of release on parole to the petitioner.
3. In this case, despite the opportunity given to the State on three occasions, the reply has not been filed and as a last indulgence today the date was given to file the reply, but till today the reply has not been placed on record.
4. Since the petition for release on parole is pending since 31.10.2018 and till date no reply has been filed, therefore, this Court is left with no other option except to hear the case on the basis of the averments of the petition and the

documents filed.

5. Perusal of the document would show that an application filed by the petitioner to release him on parole for 12 days has been rejected vide order dated 21.08.2018 by the Deputy Collector, Janjgir-Champa and the reasons have been assigned that a communication from the Superintendent of Police has been made, wherein the recommendation for release has not been made by the Superintendent of Police. As such the application has been dismissed.
6. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner.
7. 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.”

8. 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 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 concerning Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

9. In the light of the aforesaid principles, if the order dated 21.08.2018 is perused, it shows that the application of the petitioner was forwarded by the Jail, wherein the Superintendent of Police, has communicated by letter dated 22.03.2018 that the petitioner has proposed the surety of one Barsati Bhardwaj, who is of Village Borsi a different village, therefore, he would not be able to control the petitioner and also the victim's family member Vijay Kumar Banjare of village Uraiha, who is the nephew of the deceased Jagannath Banjare, has objected, therefore, the recommendation was made not to release the petitioner on parole. If such ground of rejection is considered in the light of the note appended to Rule 6, it would show that the parole can be refused only in case when the District Magistrate feels that the release of the prisoner is fraught with danger to the public safety. Here in the instant case no such fact exists on the face of record. Only the rejection is made on the ground that the petitioner is not able to give any surety of the same village where he wants to go and the surety is resident of different village, however, that can also be cured as the petitioner is ready and willing to furnish the surety of the same village i.e. Uraiha and further objection of the victim cannot be given preference over the rule and considered unless the same is attached with that and supported with the cogent evidence and in absence of reply, the same cannot be accepted as a gospel truth.

10. Accordingly, the order dated 21.08.2018 is set aside. The District Magistrate, Janjgir-Champa is directed to release the petitioner, if he is able to furnish the local surety of Village Uraiha and allow temporary release/parole in view of the Rule 6 of the The Chhattisgarh Prisoner's Leave Rules, 1989 and thereafter shall pass afresh orders within a period of 15 days from the date of presentation of certified copy of this order.

11. In the result, the petition stands allowed.

Sd/-
Goutam Bhaduri
Judge

Ashu