

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (Cr) No.1046 of 2019

Nirmal Sahu @ Tonu S/o Shri Maniram Sahu, Aged About-23 years, R/o Village-Padavpara Karagi Road Kota, Police Station & Tahsil-Kota, District-Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Home (Jail) Department, Mantralaya, Mahanadi Bhawan, Raipur (CG)
2. The Director General of Prisons and Correctional Services Chhattisgarh, Head Quarter – Prisons and Correctional Services Chhattisgarh, Raipur (CG)
3. The Collector-cum-District Magistrate Bilaspur (CG)
4. The Executive Magistrate, Bilaspur (CG)
5. The Superintendent of Police, Bilaspur (CG)
6. The Station House officer, Police Station-Kota, District-Bilaspur (CG)
7. The Jail Superintendent, Central Jail, Bilaspur (CG)

---- Respondents

For Petitioner	: Mr.R.R.Soni, Advocate
For Respondents	: Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/11/2019

With the consent of learned counsel appearing for the parties, the matter is heard finally.

1. The petitioner is undergoing the sentence for commission of offence under Section 376 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. He made an application for grant of parole before the District Magistrate, in which the District Magistrate called a report from the Superintendent of Police and the Superintendent of

Police opined that on his release, there is likelihood of breach of peace and recommended not to be released the petitioner on parole, which the District Magistrate, who was the authority competent to consider the application, accepted and rejected the same simply agreeing with the opinion of the Superintendent of Police, against which, this writ petition has been preferred.

2. Learned counsel for the petitioner would submit that the impugned order rejecting the application of the petitioner for grant of parole is unsustainable and bad in law.
3. On the other hand, learned Deputy Advocate General for the State/respondents, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.
5. The matter to grant parole by the District Magistrate in accordance with the Rules was considered by this Court in Writ Petition (C) No.29 of 2016 (**Rakesh Shende v. State of Chhattisgarh and others**), decided on 18.11.2016, in which it has been held as under:-

"21.It is important to mention that power to grant parole is a purely administrative decision, however, the person who has been entrusted to grant leave (parole) is the

District Magistrate in the instant case. The executive must exercise the discretion vested in it judiciously and not arbitrarily and keeping in mind the objectives of parole and also taking into consideration that regardless of the crime a man may commit, he still is a human being and has human feelings, particularly keeping the object of parole as highlighted by the Supreme Court in Inder Singh (supra) and keeping in view that the nature and length of sentence or magnitude of the crime committed by the prisoners may not be relevant for the purpose of grant of parole and further keeping in view that parole was introduced to encourage responsible behaviour in rehabilitating the prisoners and at the same time to provide them an opportunity to reform themselves into a better human being and also to provide them with an opportunity to maintain their social ties and allow the prisoners to develop a positive attitude, self-confidence and interest in life.

22. As noticed herein-above, the power of parole has been conferred by the rules to the District Magistrate and the post of District Magistrate is manned in the State of Chhattisgarh by a member of Indian Administrative Service. Therefore, the District Magistrate is required to exercise the power to consider the application for grant of parole. He has to take into consideration the object and need to grant parole to the convicted prisoners by applying their mind and come to a conclusion judiciously. The order passed by the District Magistrate in the instant case would show the complete non-application of mind, as by a cyclostyle order only name and number of prisoner has been inserted and it has been signed by the Additional District Magistrate. The manner in which the order has been passed by the District Magistrate in a mechanical manner is suggestive of betrayal of the confidence which the rule making authority reposed in the District Magistrate in conferring upon him to exercise the power to grant parole."

6. A careful perusal of the aforesaid observation made by

this Court in Rakesh Shende (supra) would show that on due application of mind in accordance with the Rules and the object and nature to grant parole to the convicted prisoner has been emphasized, but flouting the order of this Court passed in Rakesh Shende (supra), the District Magistrate simply agreeing with the opinion of the Superintendent of Police has rejected the application of the petitioner for grant of parole and even not passed reasoned and speaking order after applying its mind, which cannot be approved by this Court.

7. Accordingly, the impugned order is set-aside. The District Magistrate, Bilaspur is directed to consider the case of the petitioner to grant him the privilege of release / parole within three weeks from the date of receipt of copy of this order.
8. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-