

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.1061 of 2019

Dineshwar Chandra, S/o Shri Babulal Chandra, Aged about 29 years,
R/o Village Jharpali, Post Dansara, Police Station & Tahsil Sarangarh,
District Raigarh (C.G.)

---- Petitioner

Versus

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

---- Respondents

For Petitioner: Mr. Rishi Rahul Soni, Advocate.

For Respondents / State: -

Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/11/2019

1. This is a classic case where a convicted prisoner despite having been granted parole by the leave under Rule 4 of the Chhattisgarh Prisoner's Leave Rules, 1989 (for short, 'the Rules of 1989') and having furnished bail bonds for release on probation, has not been released by the District Magistrate-cum-Collector wholly on untenable ground reviewing the order granting parole without having any express provision under the Rules of 1989 which arises on the following facts: -

2. The petitioner is a convicted prisoner suffering his sentence in the Central Jail, Bilaspur. His application under Rule 4 of the Rules of 1989 was considered by the learned releasing authority who is the District Magistrate / Collector and it was accordingly, granted on 20-7-2018 and in compliance of that order, the petitioner also furnished bail bonds on 5-10-2018 and when the case was again placed before the District Magistrate for signing the order of release, the Collector declined to release the petitioner on parole holding that on account of elections it is not possible to release him. Not only this, when the elections of 2018 were over, again the matter was placed for consideration before the District Magistrate in which he directed his authorities to discuss the matter and on discussion, he directed for seeking fresh report of the Superintendent of Police and this time, the Superintendent of Police opined that the petitioner should not be released on parole and agreeing with the opinion of the Superintendent of Police, the District Magistrate rejected the application of the petitioner and against that order, this writ petition has been preferred.
3. Mr. Rishi Rahul Soni, learned counsel appearing for the petitioner, would submit that it is a case where the learned District Magistrate after granting release of the petitioner on parole finding him eligible for leave in accordance with the Rules of 1989, unnecessarily, on the pretext of elections, declined to release him on parole which amounts to reviewing of the order dated 20-7-2018 and which could not been exercised as there is no power of review conferred to the District Magistrate under the Rules of 1989 to review its own order. It is well settled law that unless the power of review is conferred to the statutory authority, no such power of review can be exercised. Even after the completion of elections, the petitioner was not released on parole and fresh police report was called and after calling the report, his application was

rejected which is clearly unsustainable in law.

4. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State / respondents, would submit that though the District Magistrate considered the application of the petitioner and directed him, to be released on parole, but before he could be released on parole, elections were declared and it was not found desirable in public interest to release him on parole and consequently, the District Magistrate directed not to release him on parole and after conclusion of elections, his application was again reconsidered and after obtaining report from the Superintendent of Police, the petitioner was not found eligible to be released on parole and as such no exception can be taken to the order granting his application for grant of parole.
5. I have heard learned counsel for the parties, considered the rival submissions made herein-above and went through the record with utmost circumspection.
6. The Rules of 1989 have been enacted in exercise of the powers conferred by Section 31 of the Prisoners Act, 1900 by the State Government. Rule 4 of the Rules of 1989 provides Conditions of Leave, Rule 4-A prescribes Eligibility for Leave and Duration of general leave is provided in Rule 4-C. Under Rule 6(a), sanctioning authority for first leave is the District Magistrate. It provides that 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. Rule 6 provides 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 furthest 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 alongwith 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 District Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

(b) If the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected.”

7. In the instant case, in accordance with Rule 6(a) of the Rules of 1989, the application for leave was considered and granted on 20-7-2018 in compliance of which the petitioner also furnished his bail bonds as directed, on 5-10-2018, but when the matter was placed before the District Magistrate for signing the warrant, it was declined on the ground that on account of elections, it is impossible to release the petitioner on parole.
8. Under Rule 6(a) of the Rules of 1989, no such power of review or recalling the order granting leave on any such ground has been conferred to the District Magistrate and unless expressly conferred, no such power of review can be exercised by the statutory authority.

9. The object of granting parole is to make necessary efforts to rehabilitate a convicted prisoner in the main stream of society based on Karuna (compassion) as well as on human consideration and once the District Magistrate has formed an opinion that a prisoner can be released on parole and it is not detrimental to the public interest to be released on parole, he cannot subsequently recall that order on wholly untenable grounds and detain him without there being any order communicated to him in accordance with Rule 6(b) of the Rules of 1989. It is purely an order passed on a totally arbitrary ground and is uncalled for and the accused has been granted parole subject to furnishing bail bonds which have been furnished promptly. The District Magistrate cannot sit tight over the matter and reject or review or recall the order granting parole without any authority of law. It is highly improper that a person who has been granted parole by the District Magistrate on 20-7-2018, even after lapse of one year, has not been released, it completely runs contrary to the object of parole highlighted by this Court in the matter of **Rakesh Shende v. State of Chhattisgarh and others**¹.

10. V.R. Krishna Iyer, J. speaking for the Supreme Court in the matter of **Inder Singh and another v. State (Delhi Administration)**² observed as under: -

"... parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. ..."

11. As such, parole has been considered as a part of human dignity which is included in Article 21 of the Constitution of India.

12. As a fallout and consequence of the aforesaid discussion, the impugned order dated 19-7-2019 is set-aside. Since the impugned order is set-aside, the petitioner will be released on parole as per the terms and

¹ W.P.(Cr.)No.29/2016, decided on 18-11-2016

² AIR 1978 SC 1091

conditions of the order dated 20-7-2018 within ten days from the date of production of a copy of this order.

13. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).
14. A copy of this order be sent to the Chief Secretary who shall ensure that the applications for parole are decided by the District Magistrates of each and every district in a specified time and to ensure that the prisoners who are granted parole be released on parole after complying with the formalities forthwith. The District Magistrates should further be directed to maintain a register of the applications received for parole and they are disposed of in that specified time in view of Rule 7 of the Rules of 1989. The Chief Secretary is further directed to ensure to call for the report from all the District Magistrates and examine and to ensure that all the applications pending as on date be decided forthwith / within a specified time.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma