

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 411 of 2020

- Chain Sai S/o Adal Sai Aged About 45 Years R/o Village Tarkeshwarpur, P. S. Premnagar, District Surajpur Chhattisgarh Through Yamuna Devi W/on Chain Sai Aged 35 Years, Caste Gond, R/o Village Umeshwarpur, P. S. Premnagar, District Surajpur Chhattisgarh.

----- Petitioner

Versus

- 1.State of Chhattisgarh Through The Secretary, Home Department, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh.
- 2.Collector / District Magistrate Surajpur District Surajpur Chhattisgarh.
- 3.Superintendent of Police Surajpur District Surajpur Chhattisgarh.
- 4.Jail Superintendent Central Jail Ambikapur District Surguja Chhattisgarh.

----- Respondents

For Petitioner :- Mr. Nishi Kant Sinha, Advocate.
For State/Respondent :- Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

06/11/2020

1. Proceedings of this matter have been taken up for hearing through video conferencing.
2. By the impugned order, petitioner's application for grant of release on parole under the provisions contained in Rules 4 & 6 of the Chhattisgarh Prisoner's Leave Rules, 1989 (in short, "the Rules, 1989") has been rejected.
3. Learned counsel for the petitioner would submit that the concerned District Magistrate is absolutely unjustified in rejecting the application merely on the basis of apprehension expressed by Superintendent of Police. He would further submit that the concerned Sarpanch of Gram Panchayat has no objection in releasing the petitioner on parole. He would also submit that there is no such reason assigned by the concerned District Magistrate that the petitioner's release on parole would be detrimental to public interest and only on the basis of apprehension petitioner's right to release on parole cannot be rejected

summarily.

4. Mr. Jitendra Pali, learned State counsel, would submit that the petitioner has convicted for offence under Section 302 of the Indian Penal Code and he is hardcore criminal, therefore, petitioner's release would be detrimental to the public interest and as such his application has rightly been rejected by the concerned District Magistrate.

5. I have heard learned counsel for the parties considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. At this stage it is appropriate to notice Rule 6 of the Rules, 1989 which states 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 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. Finding of the learned District Magistrate
in paragraph No.5(घ) states as under:-

“5(घ) पुलिस अधीक्षक, सूरजपुर से प्राप्त प्रतिवेदन दिनांक २६.०५.२०२० में प्रतिवेदित किया गया है कि बंदी मुक्ति बावत चौकी उमेश्वरपुर से जाँच कराया गया। बंदी के सम्बन्ध में उस ग्राम के प्रकरण के पीड़ित / प्रार्थी पक्ष के कथन में आरोपी के छुट्टी में आने से गांव घर में डर का माहौल व्याप्त होना व्यक्त किया है तथा ग्राम के सरपंच का अभिमत लिखित में प्राप्त किया गया। ग्राम पंचायत उमेश्वरपुर के सरपंच द्वारा बंदी के अस्थाई मुक्ति पर ग्राम आने से कोई आपत्ति नहीं होना बताये है तथा चौकी प्रभारी द्वारा बंदी के गांव में आने से गांव में झगड़ा विवाद, मारपीट कर गांव का माहौल खराब करने की सम्भावना व्यक्त किये जाने से पुलिस अधीक्षक, सूरजपुर द्वारा बंदी के अस्थाई मुक्ति पर नहीं छोड़े जाने हेतु प्रतिवेदित किया गया है।

उपरोक्त प्राप्त प्रतिवेदन एवं तथ्यों का परिशीलन किया गया। पुलिस अधीक्षक, सूरजपुर द्वारा बंदी को अस्थाई मुक्ति पर नहीं छोड़े जाने हेतु प्रतिवेदित किया गया है। बंदी द्वारा कारित अपराध जिसकी वह सजा भुगत रहा है, गंभीर प्रकृति की है। बंदी ०६ वर्ष ०५ माह २८ दिन की सजा काट चुका है। ऐसी स्थिति में बंदी को अस्थाई छुट्टी पर छोड़ जाना उचित प्रतीत नहीं होता है।

अतएव उपरोक्त बिंदु क्रमांक (क) से (घ) के अनुक्रम में छ.ग. बंदी छुट्टी नियम १९८९ में प्रदत्त शक्तियों का प्रयोग करते हुए बंदी क्र. २१९/५८ चैन साय आ अदल साय का अस्थाई मुक्ति पर छोड़े जाने सम्बन्धी आवेदन-पत्र अस्वीकार किया जाता है। भविष्य में उक्त बंदी पात्रता अनुसार पुनः आवेदन कर सकेगा।

सही/-

जिला मजिस्ट्रेट

जिला - सूरजपुर (छ.ग.)

8. A careful perusal of the aforesaid finding would show that the learned District Magistrate has made an inquiry, in which apprehension was expressed by the Superintendent of Police and came to the conclusion that petitioner's application is liable to be rejected, whereas the Sarpanch of the Gram Panchayat has not made any objection for releasing the petitioner on parole.

9. The petitioner's conduct has been found quite satisfactorily in jail and there is no material available on record to hold that the petitioner's release is detrimental to the public interest except apprehension expressed by the concerned Superintendent of Police.

10. Considering the object of granting release, merely on the basis of apprehension expressed by the Superintendent of Police concerned the petitioner's valuable rights to release on parole cannot be denied. Accordingly, the impugned order is set aside

and the concerned District Magistrate is directed to release the petitioner on parole subject to fulfillment of the conditions as per the Rules, 1989 on or before **13th November, 2020.**

11. The writ petition is allowed to the extent mentioned hereinabove. No cost(s).

12. Certified copy by tomorrow.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit