

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 434 of 2020**

Sarita Rajwade W/o Late Jugeshwar Rajwade, Aged about 35 years, R/o Village Kapsara, P.S. Bhatgaon, District Surajpur, Chhattisgarh.

Through her father :

Ramnarayan S/o Shivaram, Aged 59 years, Caste Rajwar R/o Village Runiyadih, P.S. Vishrampur, District Surajpur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh through the Secretary, 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 Surajpur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Nishikant Sinha, Advocate
For State :- Mr. Ayaz Naved, G.A.

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

29/10/2020

1. Proceedings of this matter have been taken up for hearing through video conferencing.
2. Mr. Nishikant Sinha, learned counsel for the petitioner, would submit that petitioner's application for grant of leave on parole under Rule 4 and 6 of the Chhattisgarh Prisoners Leave Rules, 1989 (in short, "the rules, 1989") has been rejected by the District Magistrate vide the order impugned only on the ground that the Superintendent of Police has objected on petitioner's release on parole and the offence which she has committed under Section 302 of the IPC is a serious offence, and except that, no such reason has been assigned by the District Magistrate that petitioner's release would be detrimental to public interest and she would be a threat to public security, as such, the impugned order deserves to be set aside.
3. Mr. Ayaz Naved, learned Government Advocate, would submit that learned District Magistrate has clearly recorded a finding that petitioner's release on parole would be detrimental to the public interest as she has murdered her husband which is a very serious crime, therefore, she is not entitled to be released on parole.

4. Mr. Nishikant Sinha, learned counsel for the petitioner, in rejoinder, submits that if the petitioner is released on parole, she would not visit her in-laws' place and will only stay with her parents.

5. I have heard learned counsel for the parties and perused the records.

6. In the matter of Rakesh Shende v. State of Chhattisgarh¹, this Court has held as under :-

"In exercise of the power conferred by Section 31-E of the Prisoners Act, the erstwhile State of Madhya Pradesh had enacted the Madhya Pradesh Prisoner's Leave Rules, 1989 which is also applicable in the State of Chhattisgarh as duly adopted. Rule 4 of the Rules of 1989 provides for conditions of leave. Rule 6 provides for Sanctioning Authority for first leave and a Note has also been appended to it. Rules 4 and 6 of the Rules of 1989 state as under:-

"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

¹ WPCR No. 29/2016 decided on 18/11/2016

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. 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 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."

14. On careful reading of the aforesaid provisions, it is quite vivid that the petitioner prisoner is eligible to be considered for grant of temporary leave in accordance with Section 31-A of the Prisoners Act, if he has been convicted and sentenced to a term of imprisonment of not less than three years, for a period not exceeding twenty-one days in a year, excluding the time required for journeys to the first place of his visit immediately after departure from the prison and from the place of last visit to the prison back. By virtue of Rule 4(c) of the Rules of 1989, the releasing authority, who is the District Magistrate, has to be satisfied that the leave may be granted without detriment to the public interest. Note appended to Rule 6 would show that the District Magistrate is the authority responsible for proper carrying out of the Rules of 1989, he has to make enquiry and has to 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. "

7. Reverting to the facts of the present case in light of the decision rendered by this Court in **Rakesh Shende** (supra), it is quite vivid that petitioner's application for grant of leave on parole is said to have been rejected on the

ground that the offence that she has committed under Section 302 of the IPC is a serious offence and the Superintendent of Police and the concerned Gram Panchayat have objected to petitioner's release on parole.

8. Be that as it may, the offence committed by the petitioner though is a serious offence yet as per the law, if her release is not detrimental to public interest and it fulfills the requirement for grant of parole, she is entitled to be released on parole as she is in jail for more than three years and ten months and her conduct is shown to be good in the report of the Central Jail. Considering the aforesaid fact, the impugned order is hereby set aside and learned District Magistrate is directed to release the petitioner on parole subject to her furnishing the surety as per the Rules, 1989.

9. It is made clear that on parole, petitioner will only visit her parents' village and she will not visit her in-laws' place.

10. With the aforesaid direction, this writ petition stands disposed of. No cost(s).

11.A copy of this order be sent to the concerned District Magistrate by e-mail/fax for needful and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet