

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 614 of 2020**

Suresh Kumar S/o Shyamlal Markam, Convict No. 8006/121, Aged about 35 years, Lodged in Raipur Central Jail, Distt. Raipur, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, Through Secretary, Department of Home Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
- 2.Jail Superintendent, Central Jail Raipur, Distt. Raipur, Chhattisgarh.
- 3.Superintendent of Police, Dhamtari, Distt. Dhamtari, Chhattisgarh.
- 4.Collector, Dhamtari, Distt. Dhamtari, Chhattisgarh.
- 5.Deputy Collector, Dhamtari, Distt. Dhamtari, Chhattisgarh.

--- Respondents

For Petitioner :- Ms. Rajni Soren, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****07/12/2020**

- 1.Heard on admission.
- 2.Admit.
- 3.Issue notice to the respondents.

4. Mr. Ravi Bhagat accepts notice on behalf of the respondents/State.

5. With the consent of the parties, the matter is heard finally.

6. Ms. Rajni Soren, learned counsel for the petitioner, would submit that petitioner is in jail since 11 years and he has not been granted the leave on parole even once for the aforesaid period, yet his 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 learned District Magistrate vide the impugned order merely on the basis of agreeing to the police report submitted by the S.P., Dhamtari and no reason for rejecting his application has been assigned by him as such and further the decision rendered by this Court in the matter of **Rakesh Shende v. State of Chhattisgarh**¹ has also not been complied with.

7. Mr. Ravi Bhagat, learned State counsel, would support the impugned order.

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

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

9. In the matter of Rakesh Shende (supra), 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 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. "

10. 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 learned District Magistrate has rejected the application of the petitioner for grant of parole simply on the basis of the police report without adhering to the provisions which provide for grant of parole and there is no such finding recorded by him that the release of the petitioner on parole would be detrimental to public safety which is absolutely illegal and bad in law. Learned District Magistrate could not

have rejected petitioner's application for grant of parole by simply passing an order without proper consideration and without assigning any reason for rejecting his application as held by this Court in **Rakesh Shende** (supra). As such, the impugned order is hereby set aside and learned District Magistrate is directed to consider petitioner's application afresh and pass an order after considering it in accordance with Rules 4 and 6 of the rules, 1989 and in accordance with the decision rendered by this Court in **Rakesh Shende** (supra) within 10 days from the receipt of a copy of this order.

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

12. 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