

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 27 of 2021**

- Jai Aseem Ekka S/o Mozess Ekka Aged About 30 Years Prisoner Number 217/58, R/o Village Sos, P.S. Khadgawa, District Koriya (Chhattisgarh) Through Sant Lal S/o Babulal, Aged 33 Years, R/o Village Pachra, P.S. Surajpur, District Surajpur (Chhattisgarh).

----- Petitioner**Versus**

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

----- Respondents

For Petitioner :- Mr. Nishi Kant Sinha, Advocate.
 For State/Respondent :- Mr. Ravi Bhagat, Dy. G.A.
 Amicus Curiae :- Mr. Shivang Dubey, Advocate.

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

22/01/2021

1. Heard

2. The present writ petition is directed against the order dated 31.07.2020 whereby the learned District Magistrate, Koriya, has rejected the petitioner's application for grant of leave/parole only on the ground that the concerned Superintendent of Police has not recommended to release the petitioner on leave/parole.

3. Learned counsel for the petitioner would submit that the concerned District Magistrate is absolutely unjustified in rejecting the petitioner's application without assigning any reason. He would further submit that decisions rendered by this Court in the cases of **Rakesh Shende vs. State of C.G. (WPCR No.29/2016)** decided on **18.11.2016** and **Santhram Sinha vs State of C.G. (WPCR No.182/2015)** decided on **07.01.2016** have not been considered, as such, the impugned order deserves to be set aside and the matter be remitted to the

learned District Magistrate, Koriya, for considering the petitioner's application strictly in accordance with law.

4. Learned State counsel would oppose the prayer of learned counsel for the petitioner and support the impugned order.

5. Mr. Shivang Dubey, Advocate assisting the Court, would submit that it is a case of sexual offence and petitioner has been convicted for the offence under Section 376D of the IPC, therefore, notice to the complainant would also be necessary.

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

7. In the case of Rakesh Shende (supra) this Court has 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 and another v. State (Delhi Administration)¹ 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

¹ AIR 1978 SC 1091

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."

8. In the case of the Santhram Sinha (supra) this Court has held as under:-

"9. The report of the Station House Officer/Superintendent of Police has nowhere stated that petitioner's release is detrimental to public interest.....

10. While taking the above view it would be profitable to refer to the law laid down by the Supreme Court in the State of Maharashtra and another vs. Suresh Pandurang Darvakar², wherein interpreting the similar provision contained in the Prison (Bombay Furlough and Parole) Rules, 1959, the Supreme Court has held that for temporary release of a prisoner, there are twin requirements i.e. (i) a relative of the applicant should be willing to receive him while on furlough; and (ii) he must be ready to enter into a surety bond. In addition there should be a no objection from the District Magistrate or the Superintendent of Police on the ground of public peace and tranquility.

11. In Suresh Pandurang Darvakar (supra), the

² AIR 2006 SC 2471

Supreme Court held thus:-

"9. Unfortunately, the High Court does not appear to have addressed itself to these relevant aspects. It took note of the fact that nobody was willing to stand surety for release of the respondent. The High Court directed that he can be released on furnishing surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. There is another requirement. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rules 6, Rule 4 (4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. The High Court has not recorded any finding that the report of the District Magistrate and/or Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquility."

9. Reverting to the facts of the case, in the light of the aforesaid discussion, it is quite vivid that the principle of law laid down in the aforesaid cases have not been

considered by the learned District Magistrate and merely on the ground that the concerned Superintendent of Police has not recommended to release the petitioner, petitioner's application has been rejected.

10. Learned District Magistrate is required to consider and record a finding as to whether the petitioner's release on parole is detrimental to the public interest or not. Without recording such a finding the application cannot be rejected summarily.

11. In view of the above, the impugned order is set aside and the matter is remitted to the District Magistrate, Koriya, who shall also issue notice and hear the complainant-victim before considering the application for grant of parole, thereafter, pass a reasoned and speaking order in the light of the decisions rendered by this Court in the case of *Rakesh Shende* (supra) and *Santhram Sinha* (supra) within three weeks from the date of receipt of copy of this order.

12. The instant writ petition is allowed to the

extent indicated hereinabove.

13. Certified copy as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit