

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 181 of 2021**

- Lokesh Sahu, son of Bhuneshwar Sahu, aged about 23 years, resident of Village Mahrajpur, Police Station Lalbagh, District Rajnandgaon (CG)

---- Petitioner (In jail)**Versus**

1. State of Chhattisgarh, Through the Jail Secretary, Home (Jail) Department, Mantralaya Mahanadi Bhawan, New Raipur, Police Station - Rakhi, District - Raipur (CG)
2. Collector & District Magistrate, Rajnandgaon, District - Rajnandgaon (CG)
3. Superintendent of Police, Rajnandgaon, District - Rajnandgaon (CG)

---- Respondents

For Petitioner	:	Mr. B.P. Singh, Advocate
For Respondents	:	Mr. Uddhav Sharma, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

18/10/2021

1. Challenge in this petition is to the order dated 3.10.2019 (Annexure P-1) by which application filed by petitioner for his temporary release from jail on parole is dismissed by the Additional District Magistrate, Rajnandgaon.
2. Mr. B.P. Singh, learned counsel for petitioner would submit that petitioner and 13 others were tried for commission of offence under Section 302 of the Indian Penal Code and after conclusion of trial, all of them have been convicted and sentenced by learned 2nd Additional Sessions Judge, Rajnandgaon on 25.11.2017. Petitioner is languishing in jail from 5.10.2016. An application under Rule 5 of the Chhattisgarh Prisoner's Leave Rules, 1989 (for brevity 'Rules

of 1989') was submitted by petitioner before the Superintendent, Central Jail, Durg for releasing him temporarily on parole. The Superintendent of Central Jail forwarded petitioner's application to the Sanctioning Authority as prescribed under Section 6 of the Rules of 1989 i.e. District Magistrate. On receipt of application, the District Magistrate called report from concerned Superintendent of Police, who in turn called report along with opinion from the Station House Officer of concerned police station. While preparing report, concerned SHO recorded statements of Sarpanch & Panch of Gram Panchayat Maharajpur; family members & relatives of deceased and other villagers of village Maharajpur. The SHO concerned has opined that it will not be proper to temporarily release petitioner from jail on parole. The District Magistrate only considering opinion of SHO, which was forwarded by Superintendent of Police, has dismissed petitioner's application for his temporary release on parole. It is pointed out that District Magistrate has passed stereotype order (Annexure P-1) without applying his mind. He submits that as per provisions of Rule 9 of the Rules of 1989, the District Magistrate has to consider application filed by any convicted prisoner judiciously and rejection of such application is only in exceptional circumstance where District Magistrate is satisfied that release of prisoner is fraught with danger to the public safety. No such satisfaction is recorded by the District Magistrate in order impugned, hence it is liable to be quashed. He also pointed out that Tekram Sahu, Tamesh Kumar Sahu,

Sarpanch & Panch of village Panchayat Maharajpur; Ajit Ram Sahu, Rural President of Village Maharajpur; Vinod Kumar Sahu, Taan Singh Sahu, villagers of village Maharajpur have stated in their statements recorded by SHO that they are having no objection in temporary release of petitioner on parole.

3. Mr. Uddhav Sharma, learned Government Advocate for the State opposes the submissions made by learned counsel for petitioner and submits that after receiving application of petitioner for temporary release on parole, the Superintendent, Central Jail, Durg forwarded the same to Competent Authority i.e. District Magistrate. Report was called from the Superintendent of Police, District Rajnandgaon. The Station House Officer of concerned police station recorded statements of various persons including Yogiram Sahu, Narendra Kumar Sahu, Churendra Kumar Sahu, villagers of village Maharajpur, who have expressed apprehension in their statements that release of petitioner on parole will lead to repetition of act of committing offence. Based on the statements of afore-named persons, the SHO submitted report opining that release of petitioner on parole would not be proper. He submits that under Rule 6 of the Rules of 1989 it is discretion of District Magistrate to allow or reject application filed for grant of temporary release on parole by any prisoner considering facts and circumstances of each case based on report submitted by concerned authority. However, learned State Counsel does

not dispute that except crime in which petitioner is convicted, he has no other criminal antecedent, as reflecting from proceedings drawn by District Magistrate and report submitted by SHO.

4. I have heard learned counsel for parties.
5. Rules of 1989 are framed in exercise of powers conferred by Section 31 of the Prisoners Act, 1900. Rule 4 prescribes conditions of leave, which reads 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 fulfils 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.

Rule 4-A of the Rules of 1989 deals with eligibility of leave, which is reproduced below for ready reference;-

“4-A. Eligibility for Leave.- Notwithstanding anything contained in Sections 31A and 31B of the Prisoners Act, 1900, eligibility criteria for leave for prisoners, undergoing sentences in the prisons of the State shall be as follows :-

(1) Prisoner who has undergone at least 6 months of actual sentence out of total sentences (excluding undertrial period and remission) shall be eligible for general leave, but for emergency leave, eligibility for leave shall be calculated from the date of admission into prison.

(2) Prisoner has shown good conduct in Jail during the period of his undertrial confinement and has not been punished for any other Jail offence or punishable offence.

(3) Prisoner has shown good conduct during the period of the year in which prisoner submits his application for leave. “

Rule 4-B of the Rules of 1989 deals with category of prisoners, who are not eligible for leave, which is also extracted below:-

“4B.-Category of prisoners, who are not eligible for leave.- (1) Prisoners who have been accorded with any punishment for a jail offence other than punishment of warning while undergoing their sentences, and such punishment has not been imposed upon them 3 years prior to them the date of his application for leave.

(2) Such prisoner who has been punished with deferment of privilege of leave for not more than one year under Section 724 of Jail Rules, shall not be eligible for leave till the completion of the period of such order.

(3) In case of a prisoner who has been sentenced to any punishment owing to his escape during his previous leave such prisoner shall not be eligible for general leave, for the rest of his term of sentence.

(4) Such prisoner who has been prosecuted in any other case or cases when are undertrial in the Court, in spite of his release on security in that case.”

6. Rule 6 of the Rules of 1989 reads thus;-

“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.”

7. Perusal of above quoted provisions would show that prisoners falling under Rule 4-B are held to be not eligible for privilege of leave. In the 'note' appended to Rule 6, it is mentioned that District Magistrate can reject application for temporary release on parole only in case where he is satisfied that release is fraught with danger to public safety.
8. Statements of persons recorded by SHO are placed on record. Statements of five villagers including Sarpanch & Panch of Gram Panchayat are also available on record, in which they have not raised objection stating that release of petitioner is fraught with danger to public safety. Rather, they have stated that they have no objection in release of petitioner

on parole. From perusal of statements of persons referred by learned State Counsel would reveal that they are relatives of deceased including father of deceased. Copy of judgment of conviction is also placed on record as Annexure P-2 wherein cause of commission of offence is not mentioned to be any personal enmity or property dispute.

9. Hon'ble Supreme Court in case of **Dadu alias Tulsidas v. State of Maharashtra** reported in **(2000) 8 SCC 437** while considering the issue of release of convicted prisoner on parole has held thus;-

“6.Parole is not a suspension of the sentence. The convict continues to be serving the sentence despite granting of parole under the Statute, Rules, Jail Manual or the Government orders. "Parole" means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually been in jail serving part of sentence.”

- 10.In case of **Sunil Fulchand Shah vs. Union of India & ors** reported in **(2000) 3 SCC 409** it was held as under:-

“24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from

internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word 'Bail' is surety. In Halsbury's Law of England 4th Ed., vol 11, para 166, the following observation succinctly brings out the effect of bail:

"The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned."

In case of **State of Gujarat & anr Vs. Lal Singh alias Manjit**

Singh & ors reported in **(2016) 8 SCC 370** Hon'ble Supreme

Court has held as under:-

"33. So far as direction for grant of parole is concerned, we find that the learned Judge has directed parole to be granted for three months forthwith. In *Sunil Fulchand Shah v. Union of India* (supra) the Constitution Bench while dealing with the grant of temporary release or parole under Sections 12(1) and Section 12(1-A) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) had observed that the exercise of the said power is administrative in character but it does not affect the power of the High Court under Article 226 of the Constitution. However, the constitutional court before directing the temporary release where the request is made to be released on parole for a specified reason and for a

specified period should form an opinion that request has been unjustifiably refused or where the interest of justice warranted for issue of such order of temporary release. The Court further ruled that jurisdiction has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court should leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu.”

11. Perusal of aforementioned rulings of Hon'ble Supreme Court would show that release of convicted prisoners on parole is a wing of reformatory process to bring them in mainstream of society to avoid their disrespect. Releasing prisoner on parole is also to grant partial liberty.

12. If the order impugned passed by the District Magistrate is considered in the light of above rulings of Hon'ble Supreme Court and provisions of the Rules of 1989, it is clear that District Magistrate has not properly applied his mind on application of petitioner for grant of parole to him and passed impugned order taking into consideration only opinion of SHO, which he had formed on the basis of statements of family members and relatives of deceased only. It is for the District Magistrate, who is 'Sanctioning Authority' under the Rules of 1989, to apply his mind judiciously to achieve object of the Prisoners Act, 1900 and the Rules framed thereunder i.e. Rules of 1989. As the District Magistrate has not considered entire material available with him along with report forwarded by concerned SHO, therefore, this Court is of the opinion that

District Magistrate failed in his duty while exercising jurisdiction under Rule 6 of the Rules of 1989. Hence, order impugned Annexure P-1 is not sustainable and liable to be quashed.

13. Consequently, writ petition is allowed. Impugned order dated 3.10.2019 (Annexure P-1) is quashed and application of petitioner filed under the Rules of 1989 for grant of parole is restored. Respondent No.2 is directed to consider and decide petitioner's application for grant of parole afresh within a period of two months from date of receipt of copy of this order, in accordance with law, considering aforementioned rulings of Hon'ble Supreme Court and relevant provisions of the Rules of 1989.
14. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-