

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 250 of 2021

Order Reserved on : 19.07.2021

Order Delivered on : 18.08.2021

Smt. Gunja Sahu, W/o Sajan Dewar, Aged About 62 Years, R/o Subhas Nagar Dewar Para, Telebandh, Police Station-Telibandha, District-Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary Home, Department of Home Affairs, Raipur (C.G.)
2. Superintendent of Jail, Central Jail, District- Raipur (C.G.)
3. Collector/District Magistrate Raipur (C.G.)
4. Station House Officer Police Station- Telibandha, District- Raipur (C.G.)
5. Superintendent of Police Raipur, District- Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. Awadh Tripathi, Advocate.
For State/Respondents	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, with a prayer to release son of the petitioner on leave under the Chhattisgarh Prisoner's Leave Rules, 1989 and to quash the order dated 23.02.2021 (Annexure P/2) passed by Additional District Magistrate, Raipur, District-Raipur (C.G.) as well as order dated 24.12.2020 (Annexure P/2) passed by Senior Superintendent of Police, Raipur (C.G.) by which application of the son of the petitioner for grant of leave has been rejected.
2. The brief facts as projected by the petitioner are that son of the petitioner was languishing in jail from 18.10.2013 to 29.01.2015 & from 11.05.2018 onwards and in total he has served more than 5 years of jail sentence on account of his involvement in commission of offence punishable under Sections 147, 148,

302/149, 325/149 of I.P.C., wherein he was sentenced for lifetime.

3. Learned counsel for the petitioner would submit that now son of the petitioner has already suffered jail sentence more than 5 years and as per the Chhattisgarh Prisoner's Leave Rules, 1989 (for short "the Rules, 1989") framed by State of Chhattisgarh, he is entitled for grant of leave. Hence, it is prayed that on above factual matrix, he may be released on parole.
4. Learned State counsel has filed reply on 21.06.2021 enclosing copy of letter dated 23.11.2020 of In-charge of Police Station-Telibandha, District- Raipur, wherein it has been mentioned that there is dispute between the parties due the incident occurred, therefore, he has submitted report for not releasing the petitioner on parole. He would further submit that the order passed by the Additional District Magistrate, Raipur as well as Senior Superintendent of Police, Raipur are legal and justified, present petition is without merit and substance, hence, it is prayed that this writ petition may kindly be dismissed.
5. I have heard learned counsel for the parties and perused the records annexed with the petition with utmost satisfaction.
6. This Court in case of **Ratan Das Vs. State of Chhattisgarh & others¹**, considering the provisions of the Prisoners Act, 1900 (for short "the Act, 1900"), the Rules, 1989, relied upon judgments passed by Hon'ble the Supreme Court in **State of Maharashtra & another Vs. Suresh Pandurang Darvakar²**, **Dharani Sugars & Chemicals Limited Vs. Union of India & others³** and **Asfaq Vs. State of Rajasthan & others⁴**, as well as judgment passed by the Coordinate Bench of this Court, held in para 16 & 17, which are extracted below:-

"16. From the above discussion, considering the Rules, 1989 and also the law laid down by Hon'ble the Supreme Court in above mentioned judgments, **Asfaq (Supra)**, it is clear that the authority while allowing or rejecting the application of the prisoner for leave on parole, has to consider the parameters

1 WPCR No. 256 of 2021 (decided on 30.07.2021)

2 AIR 2006 SC 2471

3 (2019) 5 SCC 480

4 AIR 2017 SC 4986

laid down in the Rules, 1989. From the facts of the present writ petition, it is clear that there is no such consideration made, therefore, the decision making process of the authority suffers from non-application of mind and deviation from the standard procedure prescribed under the Rules, 1989, as such, order dated 30.12.2020 rejecting the parole of the petitioner is liable to be quashed.

17. These rules clearly stipulate that the District Magistrate while considering the application for grant of parole, should consider the conditions as enumerated in Rule 4 & 6 of the Rules, 1989 and thereafter, based upon the material, he should form opinion whether the prisoner is entitled to be released on parole or not. A detailed procedure has been prescribed under the Rule 1989, which has to be strictly adhered to by the District Magistrate.”

7. The Rules, 1989 casts upon the authorities to follow the procedure whereas the impugned order is silent on the point whether such procedure has been followed or not. Even in the return, the State has not provided any material to substantiate their stand or the procedure prescribed under the Rules, 1989 has been followed or not. It is well settled that if the particular duty has been cast upon the authority, he has to act according to the prescribed method only and any deviation from such procedure, will vitiate the decision making process of the authority.
8. In view of the facts and circumstances of the case as well as the aforesaid law laid down by Hon'ble the Supreme Court and taking into consideration that no material has been placed on record by the respondent to substantiate the averments made in the order, the order dated 23.02.2021 (Annexure P/2) passed by Additional District Magistrate, Raipur (C.G.) as well as order dated 24.12.2020 (Annexure P/2) passed by Senior Superintendent of Police, Raipur (C.G.) are quashed. The son of the petitioner is to be entitled to leave for the period prayed by him in his application. The District Magistrate and the Superintendent of Jail, are directed to do the needful in the matter within a period of 15 days from the date of receipt of copy of this order.
9. It is made clear that on completion of the leave period, the son of the petitioner shall surrender before the jail authorities

immediately and shall not commit any offence or create any law and order situation during the period of leave.

10. Accordingly, the instant writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun