

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 256 of 2021

Order Reserved on : 05.07.2021

Order Delivered on : 30.07.2021

Ratan Das, S/o Rahan Das, Aged About 35 Years, R/o Azad Chowk, Aara Machine, Ward No. 20, P.S. Rampur, District- Korba (C.G.)

Through: Rahas Das, S/o Bahoran Das, Aged About 63 Years, C/o Vikram Das, R/o Village- Hunkara, P.S. Katghora, District- Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through: Its Principal Secretary, Department of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District- Raipur (C.G.)
2. The Jail and Correctional Services Chhattisgarh, the Director General Prisons, Jail Road Raipur, District- Raipur (C.G.)
3. The Jail Superintendent, Central Jail Bilaspur, District- Bilaspur (C.G.)
4. The District Magistrate Korba, District- Korba (C.G.)
5. The Superintendent of Police Korba, District- Korba (C.G.)

---- Respondents

For Petitioner	:	Mr. Sunil Pillai, Advocate.
For State/Respondents	:	Mr. Gurudev I. Sharan, Govt. Adv. with Mrs. M. Asha, 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 him on leave under the Chhattisgarh Prisoner's Leave Rules, 1989 and also to quash the order rejecting leave of the petitioner, if formally passed by District Magistrate, Korba (C.G.)
2. The brief facts as projected by the petitioner are that the petitioner is in jail since 28.01.2015 as he was involved in commission of offence punishable under Section 302 I.P.C. for lifetime imprisonment in pursuance of the order of punishment

dated 29.12.2015 passed by learned Sessions Judge, Korba (C.G.) in Sessions Trial No. 54/2015.

3. Learned counsel for the petitioner would submit that the State of Chhattisgarh has framed the Chhattisgarh Prisoner's Leave Rules, 1989 (for short "the Rules, 1989") in exercise of powers conferred under Section 31A of the Prisoners Act, 1900 (for short "the Act, 1900"). Rule 4-A of the Rules, 1989 provides for eligibility for leave to the prisoner. Rule 6 of the Rules, 1989 provides for sanctioning authority for first leave. Rule 8 of the Rules, 1989 provides for sanctioning authority for subsequent leaves. Rule 9 of the Rules, 1989 provides for conditions for release on leave. He would further submit that since the petitioner has been convicted vide order dated 28.01.2015 and he has completed more than six years of jail sentence, therefore, as per the Rules, 1989, he is entitled to be released on parole.
4. Learned counsel for the petitioner would rely upon the judgment dated 18.11.2021 (Annexure P/2) passed by the Coordinate Bench of this Court in Writ Petition (Cr.) No. 29 of 2016 (Rakesh Shende Vs. State of Chhattisgarh & others) and judgment dated 23.01.2018 (Annexure P/3) passed in Writ Petition (Cr.) No. 524 of 2017 (Rajman Yadav Vs. State of Chhattisgarh & others) wherein grant of parole has been considered by the Coordinate Bench. He would further submit that the petitioner is similarly situated person, therefore, his case also deserves to be considered as per the law laid down by the Coordinate Bench of this Court. Hence, it is prayed that on the above factual matrix, the petitioner may be released on parole.
5. Learned State counsel has filed reply, in which, it has been submitted that vide order dated 28.12.2019, the District Magistrate, Korba has rejected the application of the petitioner for release him on parole. In the order, the District Magistrate, Korba has observed that there is a lot of strain between family of deceased- Santosh Das and family of petitioner- Ratan

Das, therefore, his release on parole may create untoward incident and father of the petitioner is also not interested for releasing of the petitioner on parole. If the petitioner is released on parole, peace of the area may be adversely affected. Due to model code of conduct, affected party is also annoyed with Prisoner, therefore, it will not be proper to release the petitioner on parole. Even Police Assistance Station – Rampur has also made recommendation that the petitioner may not be released on parole. The order passed by the District Magistrate, Korba is legal which does not warrant any interference by this Court. Hence, it is prayed that this writ petition may kindly be dismissed.

6. I have heard learned counsel for the parties and perused the records annexed with the petition with utmost satisfaction.
7. The Prisoners Act, 1900 was enacted to consolidate the several Acts relating to prisoners confined by order of a Court. Section 31 of the Act relates to grant of leave to the prisoners. Sections 31-A to 31-E of the Act have been inserted by the M.P. Amendment Act by the erstwhile State of Madhya Pradesh, which are still applicable in the State of Chhattisgarh, which are extracted below :-

“31-A. Grant of leave to Prisoners.--(1) Subject to the provisions to this part and to such conditions as may be prescribed, the State Government or any authority to which the State Government may delegate its powers in this behalf may grant leave to any prisoner who has been 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 person(sic prison) back.

(2) The provisions of sub-section (1) shall not apply to a prisoner who has been classified as a habitual criminal for the purpose of the rules for the time being in force made under the Prisons Act, 1894 (IX of 1894) and who has more than three previous convictions.

(3) Leave shall not be admissible to a prisoner during a year under sub-section (1):--

- (i) for more than two occasions;
- (ii) for a period of less than ten days; and
- (iii) unless a period of three months has elapsed since the expiration of leave last availed of during the year and the commencement of the leave applied for.

(4) No prisoner shall be granted leave under sub-section (1), unless,--

- (a) he has at the time of grant of leave serve done-half of his sentence including remission, or a period of not less than two years of his sentence, including remission, whichever is less;
- (b) he has not been punished for a prison offence under Section 46 of the Prisons Act, 1894 (IX of 1894) during twelve months preceding the date of commencement of the leave applied for.

(5) The period of leave of a prisoner under sub-section (1) shall count towards the total period of his sentence.

(6) The authority directing the grant of leave to any prisoner under sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(7) If any prisoner granted leave under sub-section(1) fails to fulfill any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to penalty thereof.

(8) If a prisoner has violated the conditions of leave or bond, he shall not be entitled to leave under sub-section (1) during the remaining period of his sentence.

31-E. Power to make rule :-- (1) The State Government may make rules for carrying out the purposes of this part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) procedure to be followed in respect of the proceedings for grant of leave of emergency leave to prisoners;
- (b) the conditions for grant of leave or emergency leave to prisoners under sub-

section (1) of Section 31-A, or under sub-section (1) of Section 31-B, respectively, including conditions for the supervision during the period of such leave;

(c) travelling allowances for prisoners during the period of leave;

(d) restrictions on the movement of prisoners during the period of leave; and

(e) cancellation of leave any emergency leave or forfeiture of bond in case of violation of conditions of leave."

Section 31-E of the Prisoners Act is the power of the State Government to make rules for carrying out the purposes of the Prisoners Act, as power to consider and grant parole to convicted prisoner is essentially the function of executive.

8. In exercise of power conferred by virtue of Section 31-E of the Act, 1900, 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 the rules has been duly adopted by the State of Chhattisgarh. Rule 4 of the Rules 1989 provides for conditions of leave, Rule 4A deals with eligibility, Rule 4B deals with categories of prisoners who are not eligible for rule, 4C deals with duration of general rule & 4D deals with duration of emergency leave, Rule 5 deals with application for grant of leave, Rule 6 prescribed sanctioning authority for first leave, Rule 7 casts duty upon the authorities to communicate the order, Rule 8 provides for sanctioning authority for subsequent leaves and Rule 9 provides for conditions for released on leave. These rules are extracted below:-

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.

[4A. Eligibility for Leave. - Notwithstanding anything contained in Sections 31-A and 31-B 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.

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.]

5. Application for Grant of Leave. - (a) Request from prisoners for leave, under Section 31-A of the Act, shall be made in writing in Form 'F' to the Superintendent of the Jail (hereinafter called Superintendent) at the parade on Monday.

(b) The Superintendent shall personally examine the records of the prisoner making the request for leave and satisfy himself that the prisoner fulfils the conditions for grant of leave.

(c) If the prisoner fulfils the conditions of the leave, the Superintendent shall report the first request of the prisoner to the District Magistrate of the concerning district where the prisoner resided before conviction.

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. The examination of request of a prisoner for leave shall be treated as urgent at all stages and orders on the request shall be communicated to the prisoner expeditiously as far as possible.

8. Sanctioning Authority for subsequent leaves. - (a) Once the prisoner has availed of the leave, the Inspector General of Prisons (hereinafter called 'Inspector General') shall be competent to grant leave as per rule subsequently on fulfilment of the conditions laid down in Rule 4.

(b) Request by the prisoner for subsequent leave shall be made in the same manner as in the first leave.

[(c) (i) If the examination of the record of the prisoner shows that the prisoner is eligible for subsequent leave, the Superintendent of the Jail shall obtain the enquiry report of the Probation Officer/ Welfare Officer concerned, and thereafter shall send the case to the Inspector General.

(ii) Information regarding whether prisoner's freedom was abused by him during his previous leave, shall be gathered by Jail Superintendent from Station House Officer of the concerned Police Station in case of subsequent leave for the prisoner.

(iii) Primary report shall be collected by Jail Superintendent from Probation and Welfare Officer of his jail on the prisoner's first leave of the agriculture year thereafter case shall be submitted to Inspector General of Prisons.

(iv) Director General of Prisons may on receiving the report from Superintendent of Jail, may sanction all the four leaves in that agriculture year according to their eligibility.]

(d) On receipt of the case from the Superintendent of Jail, the Inspector General shall pass such orders as he may consider necessary.

(e) The prisoner whose leave is sanctioned by the Inspector General shall be granted a release order in Form 'B'.

[9. Conditions for release on leave. - After satisfaction regarding prisoner's eligibility for leave, Competent Authority shall release such prisoner on leave on the following conditions :-

(1) During the period of his leave, he shall not go to any place other than those places which have been mentioned in his leave application.

(2) During his leave he shall neither commit any crime nor involve in any such act that may have its bearing on public interest.

(3) After spending his leave he shall present himself at the Jail from where he was released, but in the event of accident, disease, natural calamity, such prisoner can surrender himself at any other nearest Police Station with proper ground.

Note :- Provided that no prisoner shall claim leave as a right for leave granted under these rules.]

9. Learned counsel for the petitioner would submit that the reason assigned by the learned District Magistrate, Korba vide order dated 28.12.2019 (Annexure R/1) has lost its significant as the election has already been conducted. The reason for rejecting the application of the petitioner does not fall within the ambit of conditions enumerated in Rule 4A which deals with eligibility for rule. From perusal of Rule 4-A of the Rules, 1989, it is clear that the prisoner who has undergone at least six months of actual sentence out of total sentence (excluding undertrial period and remission) shall be eligible for general leave. As per other eligibility criteria provided in the rule, the prisoner should have 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. As per Rule 4(3), the prisoner should have shown good conduct during the period of the year in which prisoner submits his application for leave. The note appendix to rule 6 provides sanctioning authority i.e. District Magistrate should make enquiry as he may consider necessary to satisfy that the

request for grant of leave can be granted without detriment to public interest or not?. The District Magistrate should consult the District Superintendent of Police on the advisability of granting the leave, the Superintendent of Police should also obtain the opinion of the Gran Panchayat where the prisoner resided before conviction and send to the District Magistrate along with his report. The note of Rule 6 further casts duty upon District Magistrate to use his discretion and can refuse to grant leave only in cases in which he is satisfied that the release is fraught with danger to the public safety. Security should be demanded only when it is really necessary. The note of Rule 6 further provides that if the prisoner intent to visit another district where his near relative resides, the concerning District Magistrate make necessary enquiry from the District Magistrate of that District before sanctioning of leave. Note 6 (b) further casts duty upon District Magistrate when the grant of leave to the petitioner 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.

10. Hon'ble the Supreme Court in case of **State of Maharashtra & another Vs. Suresh Pandurang Darvakar¹**, has held that for temporary release of a prisoner, there are twin requirements i.e. (i) a relative of th 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 peace and tranquility. Hon'ble the Supreme Court has held as under:-

“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

1 AIR 2006 SC 2471

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.

(Emphasis supplied)

11. The Rules, 1989 strictly casts duty upon District Magistrate to comply with the provisions of Rules 1989 before granting or rejecting the parole. It is duty of the authority to consider the material with regard to the good conduct of the prisoner in jail during period of undertrial confinement or has shown good conduct during the period of the year in which the prisoner submits his application for leave and the prisoner has undergone at least 6 months of actual sentence out of total sentence.
12. The Rule 4B of the Rules, 1989 provides for category of prisoners, who are not eligible for leave before recording a finding that the petitioner is not eligible for leave, the District Magistrate should examine whether (1) the prisoner has been accorded with any punishment for a jail sentence and such punishment has not been imposed upon them three years prior to them the date of his application for leave. (2) The prisoner who has been punished with deferment of privilege of leave for not more than one year under Section 724 of Jail Rules. (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. It means that the authority has to examine these parameters while accepting or rejecting the application for grant of leave.

13. These rules cast upon the authorities to follow the procedure whereas, the impugned order is silent 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.
14. Hon'ble the Supreme Court in **Dharani Sugars & Chemicals Limited Vs. Union of India & others**², has held that if a statute confers power to do a particular act and has laid down the methods, it necessarily by which doing of the act in any manner other than what it has been prescribed. The Hon'ble Supreme in para 55 has held as under:-

“55. The matter can be looked at from a slightly different angle. If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed. This is the well-known rule in *Taylor v. Taylor*, [1875] 1 Ch. D. 426, which has been repeatedly followed by this Court. Thus, in *State of U.P. v. Singhara Singh*, (1964) 4 SCR 485, this Court held:

“8. The rule adopted in *Taylor v. Taylor* [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record

the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.” (at pp. 490-491)

Following this principle, therefore, it is clear that the RBI can only direct banking institutions to move under the Insolvency Code if two conditions precedent are specified, namely, (i) that there is a Central Government authorisation to do so; and (ii) that it should be in respect of specific defaults. The Section, therefore, by necessary implication, prohibits this power from being exercised in any manner other than the manner set out in Section 35-AA.”

15. The object of parole and its importance has come up for consideration by Hon’ble the Supreme Court and has held that parole is in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain link with the society. Hon’ble the Supreme Court in **Asfaq Vs. State of Rajasthan & others**³, has considered the Prisoners Act while examining the issue for grant of leave. The relevant para of the judgment is extracted as under:-

“14. From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the

³ AIR 2017 SC 4986

culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, al beit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the society and, therefore, are in public interest.

15. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on

parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.

18. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform."

16. From the above discussion, considering the Rules, 1989 and also the law laid down by Hon'ble the Supreme Court in **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 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 28.12.2019 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.
18. In view of the facts and circumstances of the case as well as the law laid down by Hon'ble the Supreme Court, the order dated 28.12.2019 passed by the District Magistrate, Korba (C.G.) is quashed. The petitioner is held 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.
19. It is made clear that on completion of the leave period, 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.
20. Accordingly, the instant writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge