

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 324 of 2021

Khilawan Nirmalkar, S/o Bhuwan Lal Nirmalkar, Aged About 32 Years, Convict No. 3304/11, Lodged in Raipur Central Jail, Raipur, District- Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through: Secretary, Department of Home, Mantralaya, Naya Raipur, District- Raipur (C.G.)
2. Jail Superintendent, Central Jail Raipur, District – Raipur (C.G.)
3. District Magistrate, Raipur, District- Raipur (C.G.)
4. Additional District Magistrate, Raipur, District- Raipur (C.G.)
5. Senior Superintendent of Police, Raipur, District- Raipur (C.G.)
6. Thana In-Charge, Police Station- Urla, District- Raipur (C.G.)

---- Respondents

For Petitioner	:	Ms. Rajni Soren, Advocate.
For State/Respondents	:	Mr. Sudeep Verma, Dy. Govt. Adv.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

09.08.2021

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 to quash the order dated 19.03.2021 (Annexure P/1) passed by Additional District Magistrate, Raipur, District- Raipur (C.G.) by which application of the petitioner for grant of leave has been rejected.
2. The brief facts as projected by the petitioner are that the petitioner is in jail and has served more than 7 years of jail sentence as he was involved in commission of offence punishable under Sections 302 & 201 of I.P.C. and sentenced to undergo life imprisonment.
3. Learned counsel for the petitioner would submit that the petitioner has already suffered jail sentence more than 7 years and as per the Chhattisgarh Prisoner's Leave Rules, 1989 (for

short “the Rules, 1989”) framed by State of Chhattisgarh, the petitioner is entitled for grant of leave. Hence, it is prayed that on above factual matrix, the petitioner may be released on parole.

4. Learned State counsel has filed reply on 05.07.2021 contending that the councilor had objected to release the petitioner on parole on the ground that there was an atmosphere of fear and endanger against the petitioner amongst the villagers and family of the victim, therefore, there was possibility of breach of peace, as such, application of the petitioner for grant of parole has been rejected. He would further submit that the order passed by the Additional District Magistrate, Raipur is 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. Before considering the facts of the case, it is necessary to examine the provision of Section 31-A of the Act, 1900, which has been inserted by M.P. Amendment, 1985 in the original Act. Section 31-A of the Act, 1900 is 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 served one-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."

7. From perusal of aforesaid provisions of Section 31-A of the Act, 1900, it is clear that if prisoner has not been classified as a habitual criminal for purposes of the rules for the time being enforce under the Prisons Act, 1894, who has not more than three previous conviction, the prisoner has completed sentence for not less than two years of sentence including remission whichever is less, he/she has not been punished under Section 46 of the Prisons Act, 1894 during 12 months preceding the date of commencement of the leave applied for then only the prisoner is entitled to be considered for grant of parole.

8. 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 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.”

9. Section 31A of the Act, 1900 provides that authority has to examine the case of the prisoner in light of the provisions contained in Section 31A of the Act and the Rules, 1989 cast 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 conditions enumerated in Section 31A of the Act, 1900 has been

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

violated by the petitioner. The return is also silent whether 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.

10. 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 and there is violation of conditions enumerated in Section 31-A of the Act, 1900, the order dated 19.03.2021 (Annexure P/1) passed by Additional District Magistrate, Raipur, District- Raipur (C.G.) is quashed. 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.
11. It is made clear that on completion of the leave period, the prisoner 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.
12. Accordingly, the instant writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge