

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 476 of 2021**

- Narayandas Vaishnav S/o Late Kejudas Vaishnav Aged About 54 Years Convict No. 2373/09, Aged About 54 Years Lodged In Raipur Central Jail, Raipur, District Raipur Chhattisgarh.

----- **Petitioner****Versus**

1. State of Chhattisgarh Through Secretary, Department Of Home, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Jail Superintendent Central Jail Raipur, District Raipur Chhattisgarh.
3. District Magistrate Raipur District Raipur Chhattisgarh.
4. Additional District Magistrate Raipur District Raipur Chhattisgarh.
5. Senior Superintendent Of Police Raipur District Raipur Chhattisgarh.
6. Thana In Charge Police Station Abhanpur, District Raipur Chhattisgarh.

----- **Respondents**

For Petitioner	: Ms. Rajani Soren, Adv.
For State	: Mr. Gurudev I Sharan, G.A.

Hon'ble Smt. Justice Rajani Dubey, J.
Order on Board

06.12.2021

1. Heard.
2. The present petition has been filed under article 226 of the Constitution of India challenging the order dated 15.03.2021 passed by the Additional District Magistrate, Raipur (C.G.) whereby the application filed by the petitioner under

Chhattisgarh Prisoner's Leave Rule 1989 for grant of leave (parole) has been rejected.

3. The petitioner is a prisoner who has been convicted for the offence under Sections 302, 34 of the IPC and is languishing in jail since 27.06.2015. He made an application for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989 but the said application was rejected by the Additional District Magistrate, Raipur vide order dated 15.03.2021. Feeling dissatisfied and aggrieved against that order, the instant writ petition has been filed.
4. Ms. Rajni Soren, learned counsel appearing for the petitioner would submit that the impugned order is arbitrary, illegal and against the law as the application has not been considered in touchstone of the Rules. As the petitioner fulfills all conditions and eligibility required for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989, he is entitled to be released on parole. There is no clinching material available on record to show that the release of the petitioner on leave is fraught with danger to public safety, therefore, in the interest of justice, the impugned orders to be set aside and the petition deserves to be allowed. In support of her argument, learned counsel for the petitioner placed reliance in the

matter of **Rakesh Shende Vs. State of Chhattisgarh & Ors.** passed in **WPCR No. 29/2016** by this Court.

5. Mr. Gurudev I Sharan, Government Advocate appearing for the State/Respondents has supported the impugned order and submits that the report of Superintendent of Police is against the petitioner.
6. It is clear from the material available on record that petitioner filed an application before the Additional District Magistrate, Raipur and the learned Additional District Magistrate forwarded it to the Superintendent of Police and the Superintendent of Police, in turn, made inquiry and submitted his report (Annexure P/5) dated 23.11.2020 in which he is not in favour of releasing the petitioner on parole as the victim party has raised its objection.
7. This Court in the matter of **Rakesh Shende Vs. State of Chhattisgarh & Others** in **Writ Petition (Cr.) No. 29/2016** vide order dated 18.11.2016 held in paras 22 & 23 as under:-

"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 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.

23. At this stage, it would be appropriate to notice the following binding observation made by the Supreme Court in the matter of **Tarlochan Dev Sharma v. State of Punjab & Others**¹

"16..In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant

1 (2001) 6 SCC 260

shall in the performance of his official duties or in the exercise of power conferred on him act otherwise than in his best judgment except when he is acting under the direction of his official superior..."

8. In Annexure P/4, it is reported by In-Charge, Police Station Abhanpur, District Raipur that except this case no other criminal case is pending against the petitioner and nor the appellant is a habitual offender. The sureties/guarantors and Sarpanch, Gram Panchayat, Kholā have endorsed the release of the petitioner. However, wife (widow) of the deceased has raised her objection regarding the parole of the petitioner. It has not been shown in both the Annexures (Annexures P/4 & P/5) that convict has any criminal antecedent or he is a hardened criminal.

9. Looking to the Annexures P/4 & P/5 and principles and observation of the Hon'ble Supreme Court in the case of **Trilochan Das(Supra)**, I am of the considered opinion that the order passed by the Additional District Magistrate, Raipur (Annexure P/1) deserves to be quashed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India and is accordingly quashed. It is directed that the respondents shall consider the case of the petitioner to grant of him the privilege of release/parole in accordance with law indicated principles laid down in the

matter of **Rakesh Shinde (Supra) & Trilochan Das (Supra)** within forty five days from the date of production of a copy of this order.

10. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.

Sd/-
(Rajani Dubey)
Judge

v/-