

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 556 of 2020**

Mahipal Singh S/o Shiv Prayag Singh, Aged about 40 years, R/o Behind Bhagat Singh School, Pathraguda, Jagdalpur, District Bastar, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, Through the Principal Secretary Department of Home (Jail), Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
- 2.The Jail and Correctional Services Chhattisgarh, The Director General Prisons Jail Road Raipur, District Raipur, Chhattisgarh.
- 3.The Jail Superintendent, Central Jail Jagdalpur, Distt. Bastar, Chhattisgarh.
- 4.The Collector and District Magistrate, Jagdalpur, Distt. Bastar, Chhattisgarh.
- 5.The Superintendent of Police, Jagdalpur, Distt. Bastar, Chhattisgarh.

--- Respondents

For Petitioner	:-	Ms. Reena Singh, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****11/01/2021**

1. The instant writ petition is directed against the order dated 31/08/2020 by which petitioner's application for grant of leave on parole has been rejected by the District Magistrate, Jagdalpur, Distt. Bastar. Return has been filed by the State supporting the order of the District Magistrate rejecting petitioner's application for grant of parole.
2. Ms. Reena Singh, learned counsel appearing for the petitioner, would submit that learned District Magistrate is absolutely unjustified in rejecting petitioner's application for grant of leave on parole without assigning any reason and ignoring the law laid down by this Court for grant of parole in the matter of **Rakesh Shende v. State of Chhattisgarh**¹, as such, his application be granted and he be released on parole.
3. Per contra, Mr. Ravi Bhagat, learned State counsel, would submit that petitioner has been convicted for offence punishable under Section 376(2)(i) of the IPC and Section 4 of Protection of Children from the Sexual Offences Act, 2012 (hereinafter, 'POCSO Act') and he has been

¹ WPCR No. 29/2016 decided on 18/11/2016

sentenced to undergo R.I. for 10 years with fine of Rs. 1,000/- and R.I. for 7 years with fine of Rs. 1,000/-, with default stipulations respectively and since, the petitioner has been convicted for the offence punishable under the POCSO Act, as per the guidelines issued by the Central Government under Section 39 of the POCSO Act, service of notice to the victim would be necessary, but nowhere it appears from the order of learned District Magistrate that the victim was noticed before considering petitioner's application for grant of parole.

4.I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5.It is correct to say that the petitioner has been convicted for offences punishable under Section 376(2)(i) of the IPC and Section 4 of the POCSO Act.

6.Section 39 of the POCSO Act, 2012 states as under :-

"39. Guidelines for child to take assistance of experts, etc. - Subject to such rules as may be made in this behalf, the State

Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child."

7. In exercise of the powers conferred under Section 39 of the POCSO Act, Ministry of Women and Child Development, Government of India, has issued model guidelines. Guideline 2.2 is relevant to the context herein, which is noticed as under :-

"2.2. At trial

(i) Children have the right to be heard in any judicial and administrative proceedings affecting them. They must be given a reasonable opportunity to express their views all matters affecting him and these must be taken into account. He should also be allowed to provide initial and further information, views or evidence during the proceedings.

(ii) Children have the right to information about the case in which they are involved, including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child. It would be best if the lawyer coordinates with other persons or agencies concerned with the child's welfare, such as the support person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under Rule 4(7)

most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Such information would include :

- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;
- (b) The progress and results of the investigation;
- (c) The progress of the case;
- (d) The status of the accused, including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death;
- (e) The available evidence;
- (f) The child's role in the proceedings;
- (g) The child's right to express their views and concerns in relation to the proceedings;
- (h) The scheduling of the case;
- (I) All decisions, or, at least those decisions affecting their interests;
- (j) Their right to challenge or appeal decisions and the modalities of such appeal;
- (k) The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death."

8.A careful perusal of the aforesaid guidelines would show that the victim has been held entitled to receive most appropriate information of the proceedings which would include the status of the accused including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death. As such, the victim is entitled to have full information with

regard to the grant of leave on parole (if any) filed by the accused and children have the right to be heard in any judicial and administrative proceedings affecting them.

9. As such, I am of the considered opinion that since the guidelines issued by the Ministry of Women and Child Development, Government of India under Section 39 of the POCSO Act clearly provides that the victim is entitled for full information with regard to the status of parole to be granted to the person convicted on her complaint, at trial, but the said principle would also be applicable to an accused, who is ultimately convicted on her complaint after trial, and his application is to be considered for grant of leave (parole) after service of notice to the victim, therefore, learned District Magistrate is obliged to inform about the same to the victim by issuing prior notice to her and thereafter, once the notice has been issued and served to her, only after hearing her version as well, the application for parole is to be considered. This would be in consonance with the guidelines issued by the Central Government under Section 39 of the POCSO Act.

10. The Jammu and Kashmir High Court in the matter of Badri Nath v. Union Territory of J&K th. Police Station Bari Brahamana² decided on 11/12/2020, while noticing the guidelines issued by the Central Government, in paragraph 39 held as under :-

"39. In order to give a mandatory colour to the aforesaid guidelines, it is necessary to issue a Circular to all the Special Courts constituted under the POCSO Act within the Union Territories of Jammu and Kashmir and Ladakh, directing them to ensure that the victim/Child Welfare Committee is informed about the proceedings in bail petitions of the persons accused of having committed offences under the aforesaid Act by issuing prior notice to them. The Registrar Judicial is directed to place this judgment before Hon'ble the Chief Justice (Acting) with a request to consider the matter regarding issuance of a Circular in the above terms."

11. Reverting to the facts of the present case in light of the guidelines issued by the Central Government as well as the decision rendered by the Jammu & Kashmir High Court in Badri Nath (supra), it is quite vivid that the issuance of prior notice to the victim before considering petitioner's application for grant of parole by learned District Magistrate is absolutely necessary. There is one more reason for

² Bail Application No. 139/2020, CrIM Nos. 1444/2020 & 1445/2020

remitting the matter to learned District Magistrate as he has not considered the application for grant of leave (parole) filed by the petitioner in light of Rules 5 and 6 of the Chhattisgarh Prisoner's Leave Rules, 1989 and has not recorded a finding that petitioner's release on parole is detrimental to public safety and the same runs contrary to the decision rendered by this Court in the matter of **Rakesh Shende** (supra). As such, the impugned order is hereby set aside and the matter is remitted to the District Magistrate, Jagdalpur Distt. Bastar to serve notice to the victim also and after hearing her, to pass a fresh order in accordance with law within 30 days from the date of receipt of a copy of this order.

12. With the aforesaid observation/direction, this writ petition stands disposed of. No cost(s).

13. A copy of this order be sent to the Principal Secretary (Department of Home) who will in turn send a copy to all the District Magistrates of the State enabling them to notice the victim and consider the application for grant of leave (parole), if an application is filed by the

convict, convicted for offences punishable under
the POCSO Act.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 556 of 2020

Petitioner

Mahipal Singh

Versus

Respondents

State of Chhattisgarh & Ors.

(English)

District Magistrate is obliged to notice and hear the victim (POCSO Act) while considering the application for grant of parole filed by the person convicted for an offence punishable under the POCSO Act, 2012.

(Hindi)

पॉक्सो अधिनियम के अंतर्गत दंडनीय अपराध में दोषसिद्ध व्यक्ति द्वारा पैरोल हेतु प्रस्तुत आवेदन पर विचार के दौरान जिला दंडाधिकारी, पीड़िता (पॉक्सो अधिनियम) को सूचना देने एवं उसे सुने जाने के लिए बाध्य हैं ।