

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 558 of 2020**

Sunil @ Machchhar Talreja S/o Rajesh Talreja, Aged about 22 years, R/o Sindhi colony, Police Station Civil Lines, Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through the Secreatary, Home (Jail) Department, Mantralaya, Mahanadi Bhawan, Raipur, Chhattisgarh.
- 2.The Director General of Prisons and Correctional Services, Chhattisgarh, Head Quarters Prisons and Correctional services, Raipur, Distt. Raipur, Chhattisgarh.
- 3.The Collector cum District Magistrate Bilaspur, Distt. Bilaspur, Chhattisgarh.
- 4.The Jail Superintendent, Central Jail Bilaspur, Distt. Bilaspur, Chhattisgarh.

---Respondents

For Petitioner :-	Mrs. M. Asha, Advocate
For State :-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/02/2021

- 1.The petitioner is a prisoner undergoing sentence for offence punishable under Sections 148, 302 and 149 of IPC and Sections 25(1)(1-B)(B) and 27(1) of

the Arms Act, 1959 at Central Jail, Bilaspur. On 10/09/2020, he filed an application for grant of leave (on parole) but that application was kept pending and was not being decided by learned District Magistrate, Bilaspur. Ultimately, on the petition filed by the petitioner being WPCR No. 457/2020, this Court vide order dated 05/10/2020, directed the District Magistrate to consider and dispose of the said application filed by the petitioner within a specified time. Pursuant to that order, learned District Magistrate, Bilaspur took a call on petitioner's application for grant of leave (on parole) and rejected it holding that petitioner has been found involved in commission of a jail offence and therefore, he is not eligible for grant of leave (on parole) by virtue of Rule 4(A)(2) of the Chhattisgarh Prisoners Leave Rules, 1989 against which the instant writ petition has been preferred by the petitioner.

2. Mrs. M. Asha, learned counsel appearing for the petitioner, would submit that the petitioner has unnecessarily been denied the privilege of leave (on parole) on the ground of alleged commission of jail offence whereas he was not given an opportunity of hearing, as such, his application

for grant of leave (on parole) deserves to be granted.

3. Mr. Ravi Bhagat, learned Deputy Advocate General, would submit that on 23/08/2020, petitioner was found carrying prohibited articles inside the jail premises and he was convicted for offence punishable under Section 45 of the Prison Act, 1894 and a punishment of deduction of 7 earned leaves was imposed upon him under Section 46 of the Prisons Act, 1894, as such, his application for grant of leave (on parole) has rightly been rejected by learned District Magistrate.

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

5. At this stage, it would be appropriate to notice the provision contained under Section 31-A(4)(b) of the Prisoners Act, 1900, which provides as under :-

“(b) he has not been punished for a prison offence under section 46 of the Prison Act, 1894 (IX of 1894) during twelve months preceding the date of commencement of the leave applied for.”

6. Similarly, Rule 4 of the Madhya Pradesh Prisoners' Leave Rules, 1989 provides for conditions of leave which states as under :-

“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 offence in jail between the date of application for leave and receipt of the order of such leave;

(c) XXXX XXXX XXXX"

7. Section 45 of the Prison Act, 1894 defines prison offences whereas Section 46 of the Prison Act, 1894 prescribes for the punishment of such prison offences, which states as under :-

"CHAPTER XI

PRISON OFFENCES

45. The following acts are declared to be prison offences when committed by a prisoner :-

(1) to (11) XXX XXX XXX

(12) receiving, possessing or transferring any prohibited articles;

46. Punishment of such offences – The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by :-

(1) A formal warning;

(2) XXX

(3) XXX

(4) Such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government;

(5) XXX

(6) XXX"

8. As such, a conjoint reading of Section 31-A(4)(b) of the Prisoners Act, 1900 and Rule 4(b) of the

Madhya Pradesh Prisoners' Leave Rules, 1989 would show that the person applying for leave must not have been punished with the punishments prescribed under Section 46 of the Prison Act, 1894 and he also must not have committed any offence in the jail between the date of application of leave and receipt of the order of leave. As such, the two conditions precedent for grant of leave are that firstly, the person applying for leave has not been punished for a prison offence during twelve months preceding the date of commencement of the leave applied for and secondly, he has not committed any offence in jail between the date of application for leave and receipt of the order of such leave.

9. Reverting to the facts of the present case in light of the aforesaid two parameters for grant of leave (on parole), it is quite vivid that the petitioner was found involved in carrying prohibited articles inside the jail premises and he was convicted and punished for offence punishable under Section 46 of the Prison Act, 1894 by order dated 23/08/2020, as such, by virtue of Section 31-A(4)(b) of the Prisoners Act, 1900, petitioner is not eligible for grant of leave (on parole) as his application is hit by Section 31-A(4)(b) of the Prisoners Act, 1900 and learned District Magistrate has rightly

rejected petitioner's application for grant of leave (on parole) which is strictly in accordance with law. I do not find any merit in the matter, however, the petitioner is at liberty to file separate application for grant of leave (on parole) after completion of one year from the date of conviction of prison offence under Section 46 of the Prison Act, 1894 i.e. 23/08/2020 or if the order dated 23/08/2020 is set aside in any other appropriate proceedings, whichever is earlier.

10. With the aforesaid liberty reserved in favour of the petitioner, the instant writ petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet